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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~209~~. 46

JOHN W. TRAER AND ALLA D. TRAER, PLAINTIFFS IN ERROR,

vs.

HENRY CLEWS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED OCTOBER 6, 1882.

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a Supreme Court of Iowa.

Hon. Wm. H. Seevers, ch. justice; Hon. Jas. G. Day, Hon. J. H. Rothrock, Hon. Jos. M. Beck, Hon. Austin Adams, justices. E. J. Holmes, clerk.

b Be it remembered that heretofore, to wit, on the 14th day of March, 1882, the appellants filed in the office of the clerk of the supreme court of Iowa, an abstract of the record, the same, together with the endorsement of service thereon, being in the words and figures following, to wit:

1 In the Supreme Court of Iowa. October Term, 1880.

HENRY CLEWS, Appellee,
vs.
JOHN W. TRAER and ALLA D. TRAER Appellants, and JOHN F. ELY, WILLIAM GREEN, and D. W. C. ROWLEY. } In Equity.

Appeal from Linn Circuit Court.

Clark & Lynch and R. H. Gilmore, attorneys for appellee.
Hubbard & Clark, attorneys for appellants.

Endorsed: "Due and legal service of the within abstract is hereby accepted, and the receipt of copy thereof acknowledged this 26th day of February, 1881, at Cedar Rapids, Iowa. Clark & Lynch, & R. H. Gilmore, att'ys for plaintiff."

Appellants' Abstract of the Record.

On the 17th day of January, 1878, plaintiff filed in the district court of Linn county, Iowa, his petition against all the defendants except Alla D. Traer, as follows:

1. About the 28th day of November, 1874, Henry Clews & Co., and Henry Clews individually, both of New York, were
2 adjudicated bankrupts, and on the 19th of February following J. Nelson Tappan was duly qualified as the trustee of the estates of said bankrupts, and is still acting as such trustee.

2. On the — day of ——, 187–, the Cedar Rapids Northwestern Construction Co., was organized and incorporated under the laws of Iowa for the construction of railroads, with the principal place of business at Cedar Rapids, the capital stock of said company being $500,000, divided into shares of $1,000.00 each.

3. On or about the — day of ——, 187–, said Henry Clews became a stockholder in said company by subscribing for fifty shares of stock therein, and paying his assessments thereon as made by the officers of said company, and entitled to all the privileges, profits, and dividends arising therefrom, until he was adjudicated a bankrupt as aforesaid, when the said J. Nelson Tappan, by virtue of his being made trustee of the estate in bankruptcy of Henry Clews, succeeded to the legal estate and interest of said Clews in said stock, interest, and dividends.

4. That the Cedar Rapids Northwestern Con. Co. went into vol-

untary dissolution on or about the 23d day of February, 1875, and defendants, John W. Traer, John F. Ely, and William Greene were appointed trustees to settle up the business of said company and pay over to the stockholders of said company as they should be entitled, no bond being required of the stockholders or officers of the company and none being given by the said trustees; all of which was done without the knowledge or consent of said Clews or Tappan.

5. The officers of said company at the time of its so-called dissolution by whom said pretended dissolution was effected were defendants, John F. Ely, president; William Greene, treasurer; D. W. C. Rowley, secretary; and defendant, John W. Traer, as general agent and manager.

6. The assets of said Construction Company at the time of its dissolution consisted largely of donation notes, judgments,
3 subscriptions, and taxes voted in aid of the Burlington, Cedar Rapids & Minnesota railroad, together with large interests in town sites and other land upon the lines of said railway; all of which had been turned over to the Construction Company as part payment for the construction of said railway; also a large claim against the railway company approximating $100,000, as a balance yet due for the construction of said road.

7. Prior to the bankruptcy of Clews and the dissolution of said Construction Co., dividends to a large amount had been declared on the stock of said Construction Co., the amount carried to the credit of Clews on said fifty shares of stock being the sum of $15,000 or thereabouts, but no notice thereof had been given to Clews or Tappan, but both remained in ignorance thereof until a short time before the commencement of this action.

8. The officers and managers of said Construction Co., the defendants herein, instead of paying over to said Clews or Tappan such dividends as were declared and placed to Clews' credit, wrongfully and corruptly, without any authority from said Clews or Tappan, turned the same over to defendants Traer, Ely, and Greene, as trustees of said Construction Co., said sum of $15,000 dividends due Clews on his shares of stock, and thereby converted said dividends unlawfully to their own use.

9. The officers of said Construction Co., defendants herein, studiously and corruptly concealed from the knowledge of Clews and Tappan the existence of said dividends or any of them, contriving and conspiring together to cheat and defraud said Clews and Tappan out of said money and convert the same to their own personal use.

10. Defendant Traer had long been a stockholder and general manager in said Construction Co., as well as in the Burlington, Cedar Rapids & Minnesota R'y Co., and had an intimate knowledge of the value and character of all the assets of the Construction Co., and as a trustee of said company received all its assets from
4 its officers, defendants herein, without any authority from Clews or Tappan, in furtherance of the plan of conspiracy to convert the same to their own use, said dividends, a sum of $15,000 belonging to the estate of said Clews, and went into possession

thereof, and calling to his aid the other defendants and one M. Howard, who is an attorney residing in the city of Chicago, and one James Armstrong, residing at New York city, entered upon the second act of said conspiracy to cheat and defraud said Clews and Tappan out of the said dividends.

11. Defendant Traer representing to said Clews and Tappan that said fifty shares of stock were of little value, that the assets in his hands, as trustee, being all the assets of the Construction Co., when collected and realized would pay but a small dividend, and that the value of said fifty shares of stock would not exceed $600 and might be much less, and that it would be for the best interest of said bankrupt estate that said stock should be sold if that amount could be realized, recommended such a sale and suggested the name of a party that he, Traer, thought might like to purchase it at that price, which was the aforesaid James Armstrong.

12. It was arranged, pursuant to the conspiracy entered into between the defendants as aforesaid, that the following programme should be carried out, to wit: That Traer should forward to the trustee, J. Nelson Tappan, the certificate of stock for fifty shares in said Construction Co., which had never been delivered to said Clews, who should endorse the same in blank and deliver the same to said Armstrong as purchaser, who was to pay over to Tappan the money furnished therefor by Traer, with the understanding that said Armstrong should hold the same temporarily and afterwards deliver the same to said howard, who was to receive said certificate and at once proceed to Cedar Rapids and there demand of Traer the back dividends then in his, Traer's, custody belonging to the estate of said Clews, which dividends said Traer, in pursuance of the conspiracy with the other defendants, was to produce and pay over to said Howard to satisfy said demand so made.

13. That the certificate for said fifty shares of stock was sent by Traer to trustee Tappan, and the programme arranged by and between said defendants was fully carried out by the assistance of said agents, Armstrong and Howard. Said endorsement in blank of Tappan was made, the certificate was delivered by Tappan to Armstrong, and the amount stipulated, the sum of $1,200 was paid by Armstrong to Tappan, the certificate presently forwarded to Howard at Chicago, who received the same and went with it to Cedar Rapids and presented said certificate to Traer and demanded of the assets the $15,000 dividends of Henry Clews, then in the hands of Traer and the other defendants, trustees of said Construction Co., in whose care and custody said dividends then were by the wrongful, unauthorized, and corrupt acts of said defendants, officers of said Construction Co.

14. Said dividends, the sum of $15,000, was then and there, pursuant to said plan, laid down by said co-conspirators, defendants herein, paid over to said Howard by Traer, and by said Howard at once repaid to Traer.

15. The said $1,200 paid to trustee Tappan by Armstrong was furnished entirely by defendant Traer, Traer being at the additional expense of paying Armstrong his expenses and services. Neither

Armstrong nor Howard had any interest in the certificate or the dividends. The whole plan was devised by Traer with the assistance of Howard, Armstrong, and the other defendants as a pretext for delivering up to themselves and converting to their own use said dividends.

16. Howard, richer by the pittance allowed him for his services and expenses in the conspiracy, returned to Chicago, and Traer and the other defendants entered upon the full enjoyment of the $15,000 dividends belonging to the estate of Clews.

6 17. Trustee Tappan, as well as Clews, were both in ignorance of the existence of said dividends at the time of the transfer of said certificate of stock, and in no way authorized the defendants, or any of them, or any other person in any way whatever, to take possession of or in any way meddle with or disturb said dividends declared by said Construction Co. from time to time before its dissolution on said fifty shares of stock belonging to the estate of Clews, and said trustee Tappan and Clews had reason to believe, and did believe at the time of the transfer of said certificate of stock to Armstrong, that Armstrong was a third party purchasing said stock on his own account and in no way conected with the defendants, or either of them, instead of agent of said defendants, which plaintiff charges to be the fact, and of which fact Tappan and Clews had no knowledge or suspicion at the time aforesaid, but relied fully upon the representations of Traer and the other defendants.

18. That the said dividends so delivered up and converted to their own use by the co-conspirators, defendants herein, amounted to the sum of $15,000 at the time of the dissolution of the Construction Co., and that said trust fund has never been turned over to trustee Tappan or the said Henry Clews, or any part thereof, by the said defendants, or either of them, but the said trust fund of $15,000 has been by defendants wholly converted to their own use.

19. On the 14th day of December, 1877, said Tappan, trustee, for a valuable consideration to him paid by the plaintiff, sold, assigned, transferred, and set over to the plaintiff, by assignment duly acknowledged in writing, a copy of which is hereto annexed, marked "Exhibit A," and made a part hereof, any and all claim and demand arising out of said fifty shares of stock of Henry Clews in said Construction Co., and enuring to the benefit of the estate in bankruptcy of Henry Clews & Co. and Henry Clews individually, and that the plaintiff is now the holder and owner thereof.

7 20. Plaintiff and said Tappan have demanded said dividends from defendants, but defendants have wholly refused and neglected to pay over the same or in any manner account for them, or any part of them.

21. Said sum of $15,000 with the accrued interest from the time of the dissolution of said Construction Co. amounted to the sum of $20,000, the exact amount the plaintiff not being able to show, all the books of the company being in the possession of the defendants and beyond the reach of plaintiff, to all of which the plaintiff is justly entitled by reason of the premises hereinbefore set forth.

Second count.

Plaintiff, for a further and additional cause of action, states:

22. Same as paragraph first of first count.

23. Same as paragraph second of first count.

24 & 25. Same as paragraph third of first count.

26. Same as paragraph fourth of first count.

27. Same as paragraph fifth of first count.

28. Same as paragraph sixth of first couut.

29. That the defendants had long been large stockholders in the Burlington, Cedar Rapids & Minnesota R'y Co., as well as in the Construction Co., and officers and managers in both, and very intimately acquainted with the character of the assets of the Construction Co., while the trustee Tappan and Clews were both ignorant of almost everything connected with said company, saving and excepting a knowledge of the existence of said company and the ownership of said fifty shares by Clews therein.

30. That the defendants, for the purpose of overreaching and defrauding the other stockholders, including the trustee Tappan and Clews, entered into a corrupt combination and conspiracy to
8 bring about the dissolution of said Construction Co. without the knowledge or consent of said Clews or his legal representatives, and other stockholders, which scheme, so planned and concocted by said defendants, was consummated and fully carried out.

31. That said dissolution, when accomplished, was followed by the appointment of defendants Traer, Ely, and Greene as trustees, another step in the scheme of fraud entered upon by said defendants in order to defraud Clews or his legal representatives and the other stockholders in said Construction Co. out of their shares or interest in said assets represented by said stock, no bond or other security being required or given by the said managers, officers, or trustees, or either of them; this without any necessity or warrant of authority, and solely for the purpose of overreaching and defrauding other stockholders, including Clews and his legal representatives, out of the interest in said company represented by said fifty shares of stock therein.

32. Said defendants, coming into the possession and custody of said assets of the Construction Co. in the manner hereinbefore set forth and for the purposes herein declared, set themselves to the further task of coming into the possession, ownership, and enjoyment of said assets divested of said trust, and to that end combining, confederating, and conspiring together, by fraud and misrepresentation, succeeded in getting into their hands and under their absolute control by far the larger portion, if not the whole, of the assets represented by said $500,000 of stock, paying therefor in the vast majority of cases a mere pittance of its real value.

33. The defendant Traer, soon after said dissolution, in pursuance of the original plan of said conspiracy, represented to Clews and trustee Tappan the worthlessness of said assets in order to induce them to sell said stock at a less price than its real value. Among

the many misrepresentations made by said defendant Traer were that the assets of the company then in his custody as trustee consisted only of odds and ends, and were of little value; that said fifty shares of stock were not worth more than from four to six hundred dollars, and that it would take a long time to realize that amount; that a large amount of the donation notes and taxes made and voted to aid in the building of the road had lapsed by reason of the failure to construct the road within the time limited; that a large proportion of the remainder were worthless, or nearly so; that the town lots and lands were of a very small and uncertain value; that a large amount of the assets were in litigation, and that the interest of trustee Tappan consequent upon said fifty shares of stock was very small; that the debts of said Construction Co. aggregated some $30,000, and that the interest of said trustee Tappan at best could not exceed $600 when realized, and the time when it would be realized by Traer represented as remote, and recommending strongly that it would be for the best interest of the estate represented by trustee Tappan that the fifty shares of stock should be sold if anything like that amount could be realized by a sale.

34. That defendant Traer, with the knowledge, consent, and approbation of the other defendants, and actively aided and abetted by them, visited the city of New York twice, pursuant to the same plan and conspiracy, making the same representation to said trustee Tappan and Clews substantially on both occasions, and finally generously suggested and named a man that he thought might be persuaded to purchase said stock belonging to the estate of Clews, designating James Armstrong, then and now a resident of the city of New York, as a person to whom an advantageous sale of said stock could be made.

35. Trustee Tappan and Clews knew nothing absolutely of said stock representing said assets, nor of the falsity of said representation, but learning that defendant Traer had been appointed one of the trustees to settle up the affairs of the Construction Co., and confiding in Traer, whose duty it was to inform them fully of the exact condition of affairs, and to deal openly and fairly with his beneficiaries, and realizing that Traer was intimately acquainted with all the affairs of said company, and reposing special confidence in him as such trustee appointed for the very purpose of protecting the interest of said stockholders, and relying fully upon all the representations so made by Traer, as he, the said trustee of the estate of Clews, had a right to do, was induced to sell, and did finally sell and transfer, said fifty shares of stock in said Construction Co. to said James Armstrong, who had been designated by said defendant Traer as a person that was desirous of purchasing said stock, receiving therefor the sum of $1,200.

36. That in truth and in fact Armstrong was but the active agent of defendant Traer and the other defendants, who at no time had any knowledge of the assets of the Construction Co., or any interest in said stock whatever; who acted as the agent of Traer in said fraudulent proceedings in concert with one M. Howard, then and now residing in Chicago, another agent of Traer, who were both act-

ive agents of Traer for the purpose of cheating and defrauding trustee Tappan out of said fifty shares of stock; that Traer and his co-defendants furnished all the money for the purchase of said stock, and that neither Howard nor Armstrong had any interest therein; that trustee Tappan, as well as Clews, had reason to believe, and did believe at the time of making the transfer of said certificate of stock to Armstrong, that he was a third party purchasing on his own account, and in no way connected with defendants or either of them.

37. That the representations made by Traer were false and known to be false by Traer at the time of making, and made with the intent of deceiving, cheating, and defrauding trustee Tappan; that the assets of the Construction Co. then in the hands of Traer and his co-conspirators were grossly undervalued, and instead of said fifty shares of stock being of the value of from four to six hundred dollars only in the aggregate, the same, on a fair business valu-
11 ation, amounted to from ten to fifteen thousand dollars; that only a small portion, outside of the claim for $100,000 against the Burlington, Cedar Rapids & Minnesota R'y Co., which is not included in the above estimate, were in litigation; that only a small part of the donation notes and taxes had lapsed; that little, if any, was worthless from any other cause; that the town lots and other real estate were valuable, and sales at very high figures were constantly being made, and still continue to be made, and that the interest of said trustee Tappan in the assets of the Construction Co., instead of being in value from four to six hundred dollars, as represented by Traer, exceeded the sum of $12,000, by the closest business calculation, with probabilities of said interest, with careful management, netting twice that amount.

38. That trustee Tappan, relying upon the representations made by Traer, as he had a perfect right to do, and in entire ignorance of their falsity, and of the said conspiracy of defendants and their said agents and abettors, Armstrong and Howard, and misled and grossly cheated and deceived by said fraudulent representations and proceedings, was induced to sell, and did sell, said fifty shares of stock in the Construction Co. to defendant Traer for $1,200, all the time believing, and having reason for believing, that he was selling the stock to Armstrong on Armstrong's own account.

39. On the 14th day of December, 1877, trustee Tappan, for a valuable consideration to him paid by the plaintiff, sold, assigned, transferred, and set over to the plaintiff, by an assignment in writing, duly acknowledged (see Exhibit A hereto attached, a copy and a part hereof), any and all claims and demands arising out of said fifty shares of stock of Henry Clews in said Construction Co., and enuring to the benefit of the estate in bankruptcy of said Henry Clews & Co. and said Henry Clews individually, and that the plaintiff is now the absolute holder and owner thereof.

40. That by reason of said gross cheating and fraud so
12 perpetrated upon the bankrupt estate of Clews & Co. and Clews individually by the defendants as aforesaid said estate has been greatly damaged, to wit, in the sum of $12,000, to the pay-

ment of which the plaintiff, Henry Clews, by reason of said assignment of trustee Tappan, is justly entitled.

Wherefore, by reason of the premises, plaintiff prays judgment against defendants for the sum of $30,000, with interest and costs; that the plaintiff may have the aid of this court in the premises; that said sale of said stock may be set aside for fraud and held for naught, and that plaintiff may have judgment and decree setting aside said sale for gross cheating and fraud; that defendants may be required to make a general accounting, both as to the conversion of said dividends and the fraudulent sale of said stock.

That the defendants may be required to render a strict account of all their proceedings touching the moneys and other effects of said Cedar Rapids Northwestern Construction Co. coming into their hands, or the hands of either of them, as officers, trustees, or agents of said company, or in any other capacity whatever, with all their doings, or the doings of any of them, in the premises, showing fully and completely all the assets, of whatever kind or nature, that have ever come into their hands, or the hands of either of them, with the particular and itemized distribution of the whole of it; that the defendants may be ordered and decreed to account as trustees for all dividends so left in their care, custody, and control, and by them, or either of them, converted to their own use, as in first count of petition charged; that the amount due the plaintiff on account of dividends and stock in the Construction Co. may be fully and clearly ascertained and determined; that said defendant Traer may be required to answer each and every one of the interrogatories hereto appended, the same to be attached and made part of Traer's answer to this petition; that the plaintiff may have judgment and decree against defendants for the full amount found due the
13 plaintiff from said defendants, or either of them, arising out of said stock and dividend transactions, as in petition charged, and for such other and further relief as may be deemed equitable in the premises.

Duly verified.

EXHIBIT A.

In consideration of the sum of $1.00 to me paid by Henry Clews, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, I hereby sell, assign, transfer, and set over unto the said Henry Clews any and all claims and demands of every name, nature, and description that I may now have or be entitled to on account of the fifty shares of the capital stock in the Cedar Rapids & Northwestern Construction Co., which were subscribed for said Henry Clews.

Dated New York, December 6, 1877.

J. NELSON TAPPAN,
Trustee in Bankruptcy of Henry Clews & Co.,
and of Henry Clews individually.

Duly acknowledged.

Interrogatories to be Answered by the Defendant, John W. Traer.

1. When did you become a stockholder in the Cedar Rapids Northwestern Cons. Co.?

2. When did you become its general manager or agent, or one of them, and when its sole trustee, and what were your powers thereunder?

3. What were the assets of said Construction Co. at the time of its dissolution on or about the 23d day of February, 1875, and what did they consist of? State fully.

4. Who constituted the full board of directors, and who were the stockholders of said Construction Co., and what was the
14 full amount of each one's stock at the time of said dissolution, and your appointment alone or with others trustee thereof?

5. Who are the owners of said Construction Co.'s stock or the interest represented by said stock, and who have the full control thereof?

6. If in your answer to the above interrogatory you state that you are the present owner or have the full control thereof, state how and when you became sole owner or entered upon the full and absolute control of the interests represented by said stock.

7. State how much of the original capital stock of $500,000, at the time of its dissolution, had been subscribed and taken, and who is the custodian of the books of said Construction Co.

8. State the number of assessments made on said capital stock, the amount of each with the aggregate amount thereof at the time of the dissolution of said Construction Co., and your appointment either alone or with others trustee thereof.

9. State how many dividends had been declared, and the amount of each, when said Construction Co. was dissolved and you alone or you and others were appointed trustees, with the aggregate of all the dividends declared up to that time.

10. If any other or others were appointed trustees with you, state who they were and when they retired, and the reasons, if you know, for their withdrawal from said trusteeship.

11. What was the aggregate amount of dividends to the credit of Henry Clews in the hands of the said Construction Co., or their officers, at the time of the dissolution of said company?

12. State whether, to your knowledge, said Henry Clews, or his trustee, J. Nelson Tappan, ever received a certificate of stock in said Construction Co., or whether said Henry Clews or said trustee, J. Nelson Tappan, or either of them, had ever been informed
15 by any one of the declaring of any dividends prior to the dissolution of said company, and your appointment alone or with others trustee thereof.

13. State whether you personally informed the said trustee, J. Nelson Tappan or Henry Clews, after your appointment as trustee, of the fact of said dividends being in your hands, either alone or with other trustees, if any dividends had been declared and not paid over prior to your appointment as trustee, and state what became of those dividends to the credit of Henry Clews when you became trustee on

the dissolution of said Construction Co., and what was the exact amount. State fully.

14. If in answer to the above interrogatory you say that they were transferred to your custody and keeping along with the assets of said Construction Co., state when, if you ever, informed Henry Clews or said J. Nelson Tappan, trustee, of the fact of said money being in your hands, and whether you gave the amount exactly or approximately, and whether such information was conveyed to them, or either of them, by letter or otherwise. State fully.

15. State what became of those dividends. State fully.

16. State when you first became acquainted with James Armstrong, of New York city.

17. State what interest, if any, said Armstrong had in said Construction Co. prior to its said dissolution, and what, if anything, he had to do with said Construction Co., either prior or subsequent to its said dissolution.

18. State when, if at any time, you made said James Armstrong your agent in the purchase of fifty shares of stock belonging to the said bankrupt estate of Henry Clews, and what consideration you paid him for his services. State fully.

19. State what you purchased of said estate of Henry Clews through J. Nelson Tappan, its properly constituted trustee, through the agency of the said Armstrong and one M. Howard of Chicago, Ill.

16 20. State how long you have known the said M. Howard, and where you first knew him, and what interest as stockholder or otherwise he at any time had in said Construction Co., or the "odds and ends" left by said Construction Co. on its dissolution, or what other interest he had therein, if any. State fully.

21. State at whose instance and request said Howard came to Cedar Rapids with the certificate originally issued to Henry Clews for the fifty shares of stock subscribed by him in said Construction Co., and what was his business there, if you know.

22. If you went to Vinton with said Howard at that time, state the purpose and object of your visit there with him.

23. How much money, if any, did you pay the said Howard at that time? State whether you paid the same at Vinton or at Cedar Rapids, and for what you paid the same, and how you paid it, whether by draft or in currency or otherwise. State fully.

24. If the payment made to said Howard was by draft, order, check, or certificate, please attach a full copy of the same, with any endorsements, to your answer to these interrogatories.

25. If, in answer to the 23d interrogatory above, you answer you paid said Howard money, state how much of the amount paid to him was repaid to you, or to some one for you, by said Howard, and whether the same was done by draft, bank check, currency, or otherwise, directly or indirectly. State fully.

25½. Have you ever paid any money to the trustee of Henry Clews or Henry Clews & Co., bankrupts, or to Henry Clews; if so, state how much was paid, how was it paid, when was it paid, and for what purpose was it paid. State fully and particularly.

25½. If there was any correspondence or any personal interviews with the parties, or either of them, or their agents, on the subject of said payments or sale of said stock, if made, or proposed to
17 be made, state when and where the interviews occurred, and with whom, and what, if any, correspondence was had, and with whom. What was there said—what propositions made. State fully and particularly, and attach copy of all correspondence.

26. State whether in conversation with Henry Clews or his said trustee, J. Nelson Tappan, you at any time ever informed them, or either of them, of the existence of said dividends declared by said Construction Co. then lying and being in your hands alone as trustee or the other defendants with you.

27. State the full amount received by you as trustee from said donation notes, taxes, judgments, subscriptions, sales of town lots, lands, and other "odds and ends," with amount paid out in the making of said collections, itemized fully; as also the amounts paid out by you to stockholders or others as dividends. State fully and particularly.

28. What was the consideration paid J. Nelson Tappan, trustee, etc., by said Armstrong, as your agent, for the "odds and ends" represented by said certificate for fifty shares of stock, and what does the term "odds and ends" as used by you include?

29. What was the full consideration by you paid, including commissions and expenses, for the said fifty share of stock purchased from said J. Nelson Tappan, trustee estate in bankruptcy of Henry Clews; and, if you did not pay said $1,200 mentioned in petition first to said M. Howard to be paid to said James Armstrong and by him to said J. Nelson Tappan, trustee, etc., in what manner was it paid, and how did you come into the full possession thereof?

30. If, while you were trustee of said Construction Co. as aforesaid, and before any disposition of the interest of said Henry Clews in the "odds and ends" had been made, if any dividends had been declared on said interest represented by said fifty shares of stock under your management, how and when were said dividends declared, how many, and when paid? State fully.

18 31. If you now have in your possession, or under your control, or own, the certificate of stock issued to said Henry Clews, state when and of whom you obtained it, and whether by purchase or otherwise the amount paid by you therefor, and to whom. When was said certificate issued by said Construction Co., and when was it first delivered to said Henry Clews or his trustee in bankruptcy, J. Nelson Tappan?

32. If you have paid over to any one the dividends declared by said Construction Co. on said fifty shares of stock owned by said Henry Clews, turned over to you by the other defendants, with assets of said Construction Co. on its dissolution, and your appointment alone or with others trustee thereof, state by what authority you made such disposition or payment, and, if in writing, attach a copy thereof to answer to these interrogatories.

33. If you went to New York city on or about the time of an alleged sale of said certificate of Henry Clews twice, state the objects

of those visits, with particular reference to your two or more interviews with said Henry Clews and said trustee, J. Nelson Tappan.

34. State the different propositions you made on each of said visits touching the "odds and ends," and the disposition to be made thereof so far as the interest represented by said trustee, J. Nelson Tappan.

35. State whether you had any correspondence with the said Henry Clews or said trustee Tappan touching the disposition of the said assets in your hands; and, if so, append to answer to this interrogatory copies of all, if you have them.

36. If at the time of making these visits, before or since, or at any other time, you have had any correspondence with said Armstrong or said Howard touching any transactions having any relations to anything charged in plaintiff's petition, with direct reference to any sale, transfer, or purchase by you or any other
19 party, of any stock of Henry Clews or any interest therein, attach copies of all such letters to your answers to these interrogatories.

37. State in what way the liabilities of said Construction Co. at the time of its dissolution have been met and satisfied, the several claims settled, and amounts paid. State fully and particularly.

On the 4th day of April, 1878, the plaintiff filed in the clerk's office the original notice in this suit, directed to John W. Traer, John F. Ely, William Greene, and D. W. C. Rowley, the return upon which shows that the notice was received by the sheriff January 25, 1878, and served personally on said defendants on the 28th day of January, 1878, at Cedar Rapids, Linn county, Iowa.

On the 1st day of April, 1878, defendants filed their demurrer to petition, as follows:

The defendants demur to the petition of the plaintiff because the same does not state facts sufficient to entitle plaintiff to the relief demanded. Wherefore defendants pray judgment.

Afterwards, on the 11th day of April, 1878, the following stipulation was filed in the cause:

It is agreed that the above-entitled cause be transferred to the circuit court of said Linn county, and that the next term of said circuit court be the appearance term for said cause in said
20 court; and it is agreed that no change of forum shall be taken to the United States courts by either party or any other court.

April 11th, 1878.

Afterwards, on the 7th day of June, 1878, the plaintiff filed motion for trial on written evidence to the effect that the trial of said cause be upon written evidence, and to that end the court shall order all the evidence to be taken in the form of depositions to be certified by the judge and made a part of the record, as provided by law; which motion was sustained by the court and the evidence ordered to be taken in accordance therewith.

Afterwards, on the 30th day of January, 1879, the defendants'

demurrer to the petition was overruled by said circuit court, and defendants duly excepted.

Afterwards, on the 15th day of February, 1879, the defendants filed their answer to plaintiff's petition, as follows:

The defendants, for answer to the petition of the plaintiff, state:

1. The first paragraph of the petition is true.

2. The second paragraph is true.

3. It is true that Henry Clews subscribed for fifty shares of the stock of the Construction Co. mentioned in paragraph three of the petition, but whether he paid his assessments thereon as made by the officers thereof, or whether he became and was entitled to all the privileges or profits and dividends arising therefrom prior to his adjudication as a bankrupt, defendants have neither knowledge nor information sufficient to form a belief.

4. The fourth paragraph is true with this: Said corporation went into voluntary dissolution by the vote of a large majority
21 of its stockholders, but whether with the consent of said Henry Clews these defendants have neither knowledge nor information sufficient to form a belief.

5. The fifth paragraph is true with this: The said dissolution took place by virtue of a vote of the stockholders, and not by the officers alone of said corporation.

6. The sixth paragraph, in a general way, is true, but the value of the assets and of the large claim against the Burlington, Cedar Rapids & Minnesota R'y Co. were of a doubtful character, and have realized but a small sum of money.

7. For answer to the seventh paragraph, defendants say that prior to the bankruptcy of the said Henry Clews and the dissolution of said Construction Co. certain dividends had been declared on the stock of said Construction Co., but no moneys were then in the hands of said company with which to pay the same, nor were such funds in hand for a long time afterward, nor was it then known whether the assets of the company would be sufficient to pay such dividends; nor was it then known to these defendants whether the said Henry Clews had paid his assessments and was entitled to any dividends; nor did these defendants have any knowledge or information sufficient to form a belief as to the amount of dividends declared upon the stock of Henry Clews until a long time after the purchase and sale of the stock of Henry Clews hereinafter mentioned. Whether the said Henry Clews or the said J. Nelson Tappan, trustee, had any notice or knowledge of these dividends, defendants have neither knowledge nor information sufficient to form a belief; but they aver, as matter of fact, that the said Clews and the said Tappan had the same means of knowledge as these defendants, and are chargeable with knowledge, without any notice from these defendants or any other person.

8. Defendants deny that they or any officer of the Construction Co. were in duty bound to pay to Henry Clews or J. Nelson
22 Tappan, his trustee, any dividends, or that defendants wrongfully or corruptly turned over the said dividends, or any of

them, to the said defendants, Traer, Ely, and Greene, or either of them, as trustees of said Construction Co., the sum of $15,000, or any other sum, as dividends due the said Henry Clews; and, on the contrary, these defendants aver that at the time Traer, Ely, and Greene were appointed such trustees there were no funds in the hands of the Construction Co., or which came to the hands of the trustees, with which to pay any dividends, but they received only the assets of the company, consisting of unpaid donations, judgments, town lots, etc., etc. These defendants deny that they converted said dividends unlawfully to their own use, but aver that whatever dividends were due upon the stock of Henry Clews were paid over to the assignee of said J. Nelson Tappan, the trustee of Clews, from funds which came into the hands of the trustees Traer, Ely, and Greene long after the dissolution of said Construction Co., and long after the assignment of the stock of said Clews to the person hereinafter mentioned.

9. These defendants deny that during the time during which said dividends were being declared or afterwards they, or either of them, studiously or corruptly concealed from the knowledge of said plaintiff, or the said J. Nelson Tappan, the existence of any dividends, or that they contrived or conspired how they might cheat or defraud the said Henry Clews or the said J. Nelson Tappan in any manner, and deny all the facts alleged in said paragraph.

10. It is true that Traer had long been a stockholder in said Construction Co. and in the Burlington, Cedar Rapids & Minnesota R'y Co., but deny that he had been general manager of either of such companies; admit that defendant Traer had a general knowledge of the assets of said Construction Co. and of their value, but deny that the defendant trustees, or either of them, wrongfully or corruptly, or in pursuance of any original plan of conspiracy, or any plan, received the sum of $15,000 from said Construction Co., as
23 the dividend or dividends declared upon the stock of said Henry Clews, or his estate, or any other sum; but, on the contrary, aver that at the time the said Traer, Ely, and Greene were appointed trustees, and received the assets of said Construction Co., there were no funds whatever in the treasury of the Construction Co., but only the said donation notes, judgments, town lots, etc., etc., as hereinbefore stated; and defendants deny the conspiracy to cheat and defraud with one M. Howard and one James Armstrong, or either of them, as alleged in said paragraph.

11. The eleventh paragraph is denied, except this: The defendant Traer, when interrogated by Tappan in regard to the value of Henry Clews' stock, referred him to James L. Bever, Henry Stibbs, and perhaps others, who were stockholders in said Construction Co., as to the value of such stock and the assets upon which its value depended.

12. The twelfth paragraph nor any part thereof is true.

13. The thirteenth paragraph is denied, except this: It is true that defendant Traer did receive from the secretary of the Construction Co. the certificate for fifty shares in the name of Henry Clews,

which, it seems, had never been delivered to him, and sent the same by mail to J. Nelson Tappan, trustee of Henry Clews.

14. The fourteenth paragraph is denied, except this: The said Traer did pay to the said Howard $11,913.75, being the dividends due on the Henry Clews stock, but the same was paid in the manner, under the circumstances, and for the purposes hereinafter mentioned.

15. Paragraph fifteen is denied, except what modicum of truth appears by the explanation of this transaction, hereinafter mentioned in paragraph forty of this answer.

16. The sixteenth paragraph is denied, except so much as is admitted in paragrph forty.

24 17. As to the seventeenth paragraph, these defendants have neither knowledge nor information sufficient to form a belief, except as to the last clause of the last sentence. They deny that the said Henry Clews or the said Tappan relied upon any representations of the defendant Traer or the other defendants, and deny that they, or either of them, made any representations whatever, except as hereinafter stated.

18. Paragraph eighteenth is denied, except that the sum of about $11,913.75, being dividends upon the Henry Clews stock, was paid over, as hereinafter stated in paragraph forty.

19. The defendants have no knowledge or information sufficient to form a belief as to the matter stated in paragraph nineteenth of the petition.

20. The twentieth paragraph is true to this extent: Clews' attorney made demand before suit begun, but no demand was ever made by J. Nelson Tappan or for him.

21. The twenty-first paragraph is denied.

Second division of petition.

22. The twenty-second paragraph, second division, of plaintiff's petition is true.

23. The twenty-third paragraph is true.

24. Paragraph twenty-four is true, except this: The defendants had no knowledge or information sufficient to form a belief as to whether the said Henry Clews had paid his assessments upon his stock, and was entitled to all the dividends, profits, and other interests represented by the same, until about the date of the transfer of said stock by J. Nelson Tappan, trustee of Clews.

25. The twenty-fifth paragraph is true, except this: The said trustee was entitled to said fifty shares of stock, with its dividends, until he duly and lawfully sold and transferred the same, as hereinafter stated.

26. The twenty-sixth paragraph is true, except this: Said
25 Construction Co. went into voluntary dissolution by the approval and vote of a very large majority of its stockholders; and whether the said Henry Clews or the said J. Nelson Tappan had notice or knowledge of such dissolution these defendants have neither knowledge nor information sufficient to form a belief. And except

this: Said John W. Traer and William Greene, only were appointed such trustees.

27. Paragraph twenty-seventh is true, except this: The defendant John W. Traer was general agent for collection purposes, but was not general manager.

28. The twenty-eighth paragraph is true, with this: All of said assets were of doubtful value, and particularly the claim against the Burlington, Cedar Rapids & Minnesota R'y Co.

29. Paragraph twenty-ninth is a comparative statement of knowledge, and, as there stated, is not true. It may be true that the stockholders of the construction and railway companies resident in Iowa had a better knowledge of the assets than Henry Clews, but the said Henry Clews was a large stockholder in both the construction and railway companies, and had equal means of knowledge with these defendants.

30. Paragraph thirtieth is denied.

31. Paragraph thirty-first is denied.

32. Paragraph thirty-second is denied.

33. The thirty-third paragraph is denied so far as any representations are alleged to have been made by the defendants or by the defendant John W. Traer, except as hereinbefore stated in answer to the same charge in the first division of the petition. It is true that the assets of the company, in the main, are properly described in the representations pretended to have been made by the said Traer. It is true that the amount of indebtedness of the said Construction Co. was nearly in the sum of $30,000, and that the statement of the debts and assets of the company as made by James L. Bever
26 to J. Nelson Tappan, as these defendants are informed and believe, is substantially true and correct.

34. The thirty-fourth paragraph is denied.

35. Paragraph thirty-five is denied, except this: The said J. Nelson Tappan did sell and transfer the said Clews stock to James Armstrong as therein stated, with as full knowledge of the debts and the assets and their value as these defendants had.

36. The thirty-sixth paragraph is denied. It is true the said Armstrong purchased the said stock under the circumstances and for the purposes hereinafter mentioned.

37. All that part of paragraph thirty-seven which charges representations to have been made by the defendants or by the defendant Traer is untrue. The said Tappan, prior to his sale of the stock in controversy, was furnished by James L. Bever with as fair and as full information as to the debts and assets of the Construction Co. as it was then practicable to make, and had as ample knowledge and means of knowledge of the true situation and condition of the said Construction Co.'s affairs as either of the defendants. And defendants further aver that the books and papers of the Construction Co. were at all times open to the inspection of all stockholders, and that the pretended false and fraudulent representations made by the defendants, and particularly by the defendant Traer, in regard to the value of these assets are not the subject of false or fraudulent representations in law, and that the plaintiff and said Tappan were and

are bound to take notice and inquire into the value of their own property.

38. The defendants deny all the false and fraudulent representations charged in paragraph 38, and deny all of said paragraph, except this: It is true that the said J. Nelson Tappan did sell and transfer the stock of the said Clews to Armstrong, as hereinafter stated.

27 39. The defendants have neither knowledge nor information sufficient to form a belief of the facts stated in the thirty-ninth paragraph.

40. And for further answer and defense to the petition of plaintiff, defendants say that about the —— day of ———, 187–, James Armstrong, of the city of New York, purchased the said fifty shares of stock owned by Henry Clews in the Cedar Rapids Northwestern Cons. Co. for the sum of about $1,200, as these defendants are informed and believe. But these defendants deny that the said James Armstrong purchased the same for the defendant, John W. Traer, or either of the other defendants, or for the defendants jointly. And these defendants further aver that neither of these defendants were, or have been, or now are, interested in the said purchase by the said James Armstrong of said stock or the said dividends, and deny that the defendant, John W. Traer, or either of the defendants, received or ever retained any part of the dividends paid by said John W. Traer to said James Armstrong, for themselves or for the use of themselves, or either of them, in any manner.

Defendants admit that the said John W. Traer paid the said dividends to M. Howard, of Chicago, as the agent or attorney of the owner of said stock, and not otherwise.

And defendants further say that all the funds and moneys from which the said dividend on the Clews stock was paid were collected from doubtful claims, after the sale and transfer of the stock by Tappan, trustee, to the said James Armstrong.

Duly verified.

On the said 15th day of February, 1879, the defendant Traer filed answers to interrogatories annexed to plaintiff's petition, as follows:

1. I subscribed for ten shares of the capital stock when the company first organized.

28 2. I was never the company's managing officer; was general collection agent, with orders to pay over to the secretary as fast as collections were made. Was never sole trustee.

3. I have no books in my possession from which I can make such statement. The trustees settled up in full, and turned over all books and papers to the stockholders, September, 1877.

4. Same as answer to interrogatory No. 3.

5. Don't know; books will show. I never owned all the stock.

6. I do not own or control any of the stock of said Construction Co.

7. I understand the stock was all subscribed when the company

was organized, in 1870. I can't say where the books are or who is the custodian of them.

8. I think assessments were made on the stock to the amount of about 75 cents on the dollar, but can't say positively.

9. Answer same as to interrogatory No. 3.

10. William Greene and myself were appointed trustees originally February, 1875, but William Greene served only a month or so and resigned on account of necessary absence from the State. A stockholders' meeting accepted his resignation, and appointed J. F. Ely, who accepted and acted until discharged, 9th Sept., 1877.

11. None that I am aware of.

12. I received the certificate of stock in name of Henry Clews from the secretary, and forwarded the same by mail to J. Nelson Tappan, in January, 1876, I think, with the amount due upon the strock growing out of the trustees' first dividend, being $200. I can't say as to what communication the secretary had with the parties mentioned.

13. I had no communication with J. Nelson Tappan prior
29 to January, 1876, at which time I notified him that there were fifty shares of stock of the Cedar Rapids Northwestern Cons. Co. standing in the name of Henry Clews, and that the trustees would shortly make their first dividend. We had not received the books from the secretary, nor any statement from him of any amount being due Henry Clews on any account.

14. No dividends or funds of any kind were transferred to the trustees. The company's bank account was overdrawn some $600, and the indebtedness for bills payable, over-draft, right of way, and other legal liabilities in sight footed up some twelve to fifteen thousand; besides, my personal claim for services rendered the company from 1870 to April 4, 1874, $10,500, was pending and is still unpaid.

15. Answer in No. 14.

16. Knew him first as a resident of Iowa.

17. I know of no interest or connection James Armstrong had with the company's affairs at any time.

18. James Armstrong was never my agent at any time for any purpose.

19. Have never made any purchase of J. Nelson Tappan.

20. I knew M. Howard in 1867 as a resident in Iowa. He never had any interest in the Construction Co. that I am aware of.

21. I have no personal knowledge from which I can answer the question. His business was as an attorney for the owner of the Henry Clews stock, the certificate of which he presented, duly signed, to the trustees, and claiming an accounting. He was referred to the secretary as to the situation of Clews' old accounts, and finally secured from the secretary a statement that there was due Henry Clews' estate, on account of stock in the company, $10,500.

22. In behalf of the trustees I went to Vinton for the purpose of raising enough funds to pay the amount, and received
30 enough from the attorney of the company there, which had but just been paid in on account of the fifty-three litigated cases of Benton county donations, to enable me, with balance of

$2,000 from Cedar Rapids, to pay and discharge the indebtedness with interest.

23. I paid him $10,500, with interest he claimed, in currency I think.

24. In currency, I think.

25. None was repaid to me or to any one for me.

25½. The first dividend of the trustees was made about January, 1876, and the *pro rata* amount, $200, forwarded J. Nelson Tappan in draft.

25¾. I called on J. Nelson Tappan when in New York about January, 1876, in connection with business of the Howes & Macy estate. Informed him that the Clews estate had stock in the Cedar Rapids Northwestern Cons. Co., and that the trustees would shortly make, or had made, a dividend of $200, which I will forward. He inquired as to its value and I referred to several different parties, among whom were James L. Bever, H. B. Stibbs, Mills & Blake, *et al.* He proposed to sell to me but I declined buying. Recollecting of no other interview with either of the parties. Have no copies of any correspondence, "if any ever had," in my posession.

26. I made no statement to either of them as to dividends except as above.

27. Same as to interrogatory No. 3.

28. No funds have been paid to J. Nelson Tappan by James Armstrong as my agent. The term "odds and ends" means scattered assets of all kinds, after a close collection had been made.

31 29. I paid no funds to J. Nelson Tappan for any stock, either through James Armstrong, M. Howard, or any one else. I am not the owner of said fifty shares of stock.

30. Same answer as No. 25½.

31. I do not own or have the control or possession of said certificate of stock. The certificate of stock was forwarded either with or about the time the first dividend was forwarded J. Nelson Tappan.

32. The Henry Clews stock was filed for transfer about March, 1876, and the rights represented by it recognized in the owner by the trustees as in all other cases. I have not the papers now in my possession, having settled and closed up September, 1877.

33. Have been in New York several times on legal business. Saw J. Nelson Tappan but once. May have seen Clews more than once; do not remember at this late day.

34. I made no proposition to Henry Clews or J. Nelson Tappan at the time of said visits that I remember of.

35. I had no correspondence, beyond that mentioned, with J. Nelson Tappan and none with Henry Clews relative to this stock that I remember of or that I retain copies of.

36. Have no correspondence of which I retained copies with either of the parties.

37. The liabilities of the company were paid in cash in the regular course of business as far as they have been paid. The company is yet liable, I think, on my claim for personal services to the extent of $15,000, but which claim the board rejected, but which has never been settled nor waived.

Duly verified.

Afterwards, on the 19th day of July, 1879, the defendant Traer filed additional answers to interrogatories as follows:

32 The defendant, John W. Traer, as required by the order of the court, makes the following additions to his answers to interrogatories Nos. 3, 4, 9, 13, 14, 15, 16, 25½, 27, 30, and 32, attached to the petition, that is to say:

3. As already stated, I have not the books in my possession to enable me to make a statement of the assets of the Construction Co., as required by this interrogatory. I think it is impossible for any person to state from memory of what these assets consisted. The labor of preparing a statement would be very great if I had the books from which to make it. I can only state generally from memory that the assets consisted largely of town lots in the towns of Greene, Traer, Dysart, Maynard, and perhaps some other points, and also of subscriptions or judgments rendered thereon to aid in the construction of said road. These subscriptions and judgments, however, were all in the name of the railroad Co.. and although the contract for building the road provided that the Construction Co. should have the proceeds of such subscriptions, it was always a source of anxiety to me lest the railroad Co. should assume to collect such subscriptions, as it might of course lawfully have done, leaving the Construction Co. to an action or contest to enforce its contract for the proceeds. The town lots, except in the town of Greene, were originally in the same situation. In addition to the above assets there were due, at the time the Construction Co. was dissolved, some taxes voted to aid in the Construction of the road in the counties of Fayette, Floyd, Cerro Gordo, and Tama, all of which stood in the name of the railroad Co. I cannot undertake to give from memory the amount of these taxes then unpaid. The books and papers of the various counties are undoubtedly open to inspection, and the plaintiff can ascertain the amount there.

4. As I have said, I have not the records. As near as I can recollect the board of directors were William Greene, John F. Ely,
33 D. W. C. Rowley, S. L. Dows, and myself. James L. Bever had been a director, but I don't think he was on the board that year. My impression is Mr. Dows took his place. It is impossible for me to give the stockholders of the Construction Co. and the amount of each one's stock. I know that I had twenty shares. The assignee in bankruptcy of the plaintiff had fifty. George Greene had, I think, one hundred and five shares; William Greene, I think, fifty-five; D. W. C. Rowley, thirty; S. L. Dows, fifty; E. M. Greene, five; T. W. Barhydt, five; C. P. Squires, fifteen: J. W. Barnes, five. There were others, whose names and amounts of stock I do not remember. J. L. Bever had twenty-five shares, I think. The total amount of stock was five hundred shares.

9. So far as I can remember, the attempted cash dividends, without reference to the books, were, one of $100,000, ond one of $25,000. I cannot give the dates. There was no money on hand to pay either of these dividends when made. I was not present when either of them was made, but learned of them afterwards. My

understanding is that some of the stockholders were in arrears for assessments on their stock, and so far as they went they were set off against the dividends. In many cases when the stockholders applied for their share of these dividends, the notes of the Construction Co. were given. These notes formed a part of the indebtedness of the company to the amount of ten or twelve thousand dollars when the trustees took charge. I remember of no ther attempted or pretended cash dividends being declared by the Construction Co. I had nothing whatever to do with the accounts of the company at that time. Of course, during the building of the railroad, there were from time to time dividends of the stock of the railroad Co. received on the contract for building the road, but this stock never had any market value and I cannot give the details of stock dividends. I know that under the contract we received $15,000 of full paid up stock per mile for every mile of the railroad which we constructed.

34 The bonds which we were to receive from the railroad Co. were all absorbed in building the road, so that no bond dividend was ever made.

13. The dividends due, or supposed by this interrogatory to be due on the Henry Clews stock, were not paid over to the trustees when they were appointed, and no statement of his account was made to them by the former secretary until March, 1876. When the trustees were appointed the Construction Co. had no money to my knowledge. On the contrary, its bank account was overdrawn about $600. What dividends, if any, were standing to the credit of Clews on the books of the company when I was appointed trustee, I cannot pretend to state from memory, nor do I think it competent for me to undertake to state the contents of books. The books themselves will show that. But I do know that no dividends for Henry Clews or anybody else were in fact on hand or paid over to the trustees when they were appointed or afterwards. So far as dividends have been paid since the appointment of the trustees, they have been realized and collected from the assets of the company already referred to, since the trustees took charge of such assets.

14. I have not so answered. On the contrary, I have expressly stated that such supposed dividends were not transferred to the custody or keeping of the trustees along with the assets of the Construction Co. As no such dividends or money were transferred to the trustees I did not, of course, inform Henry Clews or J. Nelson Tappan that it had been transferred or was in my hands.

15. I have already stated fully and specifically that no such supposed dividends were on hand or transferred to the trustees.

16. I first knew Armstrong personally in the fall of 1875 or winter of 1876. Had known him by reputation before that as a resident of Iowa.

25½. I don't remember to have ever paid any money to

35 Henry Clews or any to J. Nelson Tappan, except the $200 mentioned in my former answer to this interrogatory.

27. This interrogatory calls for an itemized statement which can only be obtained from books not in my possession. If the plaintiff wants these books he can undoubtedly procure them. I can state

from memory that the trustees realized in cash before closing up the trust, about $46,000. About $23,000 of this was paid out on trustees' dividends, and dividends declared by the company, but unpaid, before the trustees were appointed. The balance was paid on indebtedness of the company, in part upon accounts certified by the secretary as paid from time to time, on notes of the company due and unpaid, salaries and expenses of trustees, services of attorneys, and expenses in litigation of the company, and other expenses of the company; all of which was shown by certified vouchers regularly filed and passed upon by the stockholders. The expenses of collection, inclusive of salary of trustees, was about $4,500, as near as I can remember. I cannot give items as requested.

30. There was only one dividend declared by the trustees before Tappan, as trustee, disposed of the interest of said Henry Clews in the stock of the Construction Co. This was made about January, 1876. The *pro rata* on the Clews stock amounted to $200, which was forwarded to J. Nelson Tappan by draft shortly after the dividend was declared.

32. I have already said that no dividends were turned over to me or to the trustees to pay on the Henry Clews stock at the time of our appointment or afterwards. I don't know whether this interrogatory means by what authority from the Construction Co. the trustees paid dividends, or whether it means by what authority from Tappan or Clews any dividends were paid on the Clews stock. If it means the former, the dividends were paid under the general authority of the trustees to liquidate the indebtedness of the company. If it means the latter, the Clews stock was filed for transfer with a
36 writing on the back signed by J. Nelson Tappan, which I think assigned all rights of said Tappan to or under said stock to the holder thereof. The attorney of the Construction Co. so advised me before any dividends were paid. Upon the stock being so filed for transfer, the rights of the holder were recognized and the dividends paid over. Of course this writing on the back of the stock was the only authority from Tappan, but I did not keep a copy of it and therefore cannot attach a copy as requested. After the transfer of the stock was noted, the certificate, with the writing on the back, was returned to the holder.

Duly verified.

Afterwards there was filed in the office of the clerk of said court an original notice directed to Alla D. Traer, making her a party defendant, requiring her appearance on the 5th day of January, 1880, upon which notice service was accepted by said defendant on the 27th day of October, 1879.

Afterwards, on the 28th day of October, 1879, in pursuance of said original notice to Alla D. Traer, there was filed in said cause an amendment to petition, as follows:

The plaintiff, amending his petition in equity with the leave and consent of this court, states in addition to the matters and things set forth in his petition filed January 17, 1878, that the said Alla D. Traer, wife of the defendant, John W. Traer, is a necessary party de-

fendant to this action in order to a full and complete determination of the equities between the parties hereto.

2. Plaintiff hereby further alleges as a cause of action against said Alla D. Traer, wife, etc., all that he alleged in his original petition, and the same is hereby incorporated into this amendment to
37 petition, and made a part hereof as fully as if the same had been set out *in hæc verba* herein, and for that purpose reference is hereby had to the same, and the plaintiff requires the said Alla D. Traer to plead to the said original petition as if she had been made an original party thereto.

3. Plaintiff further says that said defendant, John W. Traer, and his wife, the said Alla D. Traer, knowing that there was a large amount of money as dividends and property standing to the credit of the estate of Henry Clews, then in bankruptcy, on the books of said Construction Co., and knowing that there was a tenth part of the real estate, bills receivable, and other property of the said Construction Co. due to the said estate in bankruptcy, in the aggregate amounting to many thousand dollars, as set forth in the original petition herein, and knowing that no notice had been given the said plaintiff, or his trustee in bankruptcy, of the said dividends as they appeared upon the books of said company, and knowing that the said plaintiff and his trustee were ignorant of said dividends and of the amount of property to which the said stock was entitled upon closing up the affairs of said Construction Co., then in liquidation, corruptly conspired and agreed together to cheat and defraud the estate of Henry Clews out of the said dividends and other property, amounting in the aggregate to $20,000 to $30,000, due the said estate, and to corruptly convert the same to their own use.

4. And the plaintiff further says that heretofore, to wit, on the 19th day of March, 1876, the said John W. Traer was the principal trustee and manager of affairs of the Cedar Rapids Northwestern Cons. Co.; that all the money, books, credits, real estate, and other assets were in his hands; that his co-trustee, who occupied mainly an advisory position to the said John W. Traer, was absent from the State; that the said John W. Traer, trustee, was familiar with all the affairs of the company; that previous to the 19th of March aforesaid, there had been rapidly accumulating a large amount of money belonging to the said company, which the said Traer well knew, and that
38 the same was being deposited at Vinton, which was not the principal place of business of said company, in a bank owned by the said John W. Traer and his brother, J. C. Traer; that the said John W. Traer had in his possession all the books of the said company, and personally and without the assistance of a book-keeper kept the accounts of said company and the accounts of said trusteeship.

That some time previous to the said March 19th, 1876, said John W. Traer made a proposition to Alla D. Traer, his wife, that in order to get the possession of the said dividends and other property that she allowed her name to be used for the purpose of cheating and defrauding the estate of this plaintiff, to which she assented; that in furtherance of said agreement the said John W. Traer, and

in performing his part of the said conspiracy, while still acting as trustee aforesaid, proceeded to New York and calling upon this plaintiff and his trustee in bankruptcy, J. Nelson Tappan, falsely and fraudulently represented that there were no dividends due the estate of said Henry Clews; that the property was odds and ends and of little value; that a small dividend of $4.00 a share might soon be declared, and otherwise falsely and fraudulently represented the affairs of the company and falsely and fraudulently concealed the true condition of the company, with the intent and for the purpose of undervaluing the said property in the estimation of this plaintiff and of J. Nelson Tappan, his trustee in bankruptcy; that personally and through the use of the firm of Traer Bros., bankers aforesaid at Vinton, Iowa, of which firm the said John W. Traer was a member, the said John W. Traer and Alla D. Traer, his wife, employed one James Armstrong, an attorney of New York city, and one M. Howard, an attorney in the city of Chicago, to assist them, the said J. W. Traer and Alla D. Traer, his wife, in carrying out said conspiracy.

That through the said agency of said James Armstrong the said J. Nelson Tappan, trustee in bankruptcy of the plaintiff's estate,
39 while relying upon the representations of the defendant, John W. Traer, made to him while still acting as a trustee of the said Construction Co., and believing the said false and fraudulent representations of the said Traer to be true, in consideration of the sum of $1,200 made a blank assignment of the certificate of stock of the said estate of Henry Clews in bankruptcy, and delivered the same to the said James Armstrong. That the said James Armstrong forwarded the said certificate to the said M. Howard, attorney, whom the said John W. Traer and Mrs. Alla D. Traer had previously employed for the purpose, as hereinafter stated; that the said attorney, M. Howard, having in his possession the said certificate, and following the instructions of the said John W. Trear and the said Alla D. Traer, proceeded to Cedar Rapids, Iowa, the headquarters of the said company, and in obedience to instructions of said John W. Traer and Alla D. Traer, his wife, which instructions the said Traer and wife had given the said Howard in furtherance of said conspiracy to defraud the estate of this plaintiff, the said attorney of Traer and wife proceeded to demand of Traer as trustee the said dividends and interest. That the said Traer, as trustee, thereupon paid over to his own and his wife's attorney, the said M. Howard, the sum of $11,913.75 of the money belonging to the bankruptcy estate of Henry Clews. That the said attorney, while pretending to act for the said James Armstrong, carefully concealed from those who might inform the said plaintiff's trustee in bankruptcy, and from the papers and receipts, that he was acting as the attorney of John W. Traer and Alla D. Traer, his wife. That the said attorney of Traer and wife, after receiving the said $11,913.75 and receipting the voucher prepared by Traer as trustee, paid back the said money to John W. Traer and his wife Alla D. Traer, less the amount of his share as co-conspirator and attorney in the transaction. That the

said John W. Traer and the said Alla D. Traer thereupon converted the said money to their own use.

5. That thereafter, to wit, on the 8th day of May, 1876, the said
40 J. W. Traer, as agent for Mrs. Alla D. Traer, his wife, presented to John W. Traer, as trustee of the said Construction Co., the said certificate of stock falsely and fraudulently procured of the said J. Nelson Tappan, and the said John W. Traer, as trustee, thereupon "recognized" the said transfer and entered the same upon the books of the said company as the property of his wife, the said Alla D. Traer, who was thereafter considered by said John W. Traer, trustee, as the owner of said stock, and entitled to all future dividends thereon.

That the said John W. Traer, as agent for his wife, the said Alla D. Traer, between the 1st day of January, 1876, and the —— day of ———, 1877, purchased all the rest of the stock of the said Construction Co., and the said John W. Traer, as trustee, "recognized" the same and entered the said transfers of stock upon the records and books of the company.

That after the said John W. Traer, as agent for Alla D. Traer, his wife, had procured the transfer of all of the said stock, whose par value was $500,000, to his wife, Alla D. Traer, the said John W. Traer, as trustee of the said Construction Co., thereupon turned over and delivered to John W. Traer, as agent and attorney for his wife, Alla D. Traer, all the books, real estate, bills receivable, credits, cash, and other assets of said Construction Co., and proceeded forthwith to remain in profound ignorance of the affairs of the said Construction Co. and of the property, books, and assets of the company so turned over to the stockholders. Thereupon the affairs of said company were solemnly declared by said John W. Traer, as trustee, to be closed.

6. Plaintiff further says that his said share of the property so turned over by John W. Traer to himself and his wife was the one-tenth part thereof, the value of which (plaintiff's share) was, at the time of the conversion thereof, about $10,000, which amount, in addition to the said sum of $11,913.75, and the interest on all of said amount, is now due and owing to this plaintiff, as more fully and particularly set forth in the original petition to which this is amendatory.

41 7. The plaintiff further says that during the month of July, 1877, the plaintiff's assignor made a demand, through his attorney, F. G. Clark, upon John W. Traer, trustee, attorney for his wife, and upon him personally, for the said dividends and other property, and for an accounting of the said property to the plaintiff's said assignor. That thereafter and before the commencement of this action, and subsequent to the assignment to this plaintiff of the said claim, the said plaintiff, by his attorney, the said F. G. Clark, made the same demand that had been made previously for the plaintiff's assignor, and has since made the same demand of said A. D. Traer, and also demanded the conveyance of one-tenth interest in said real estate.

Wherefore plaintiff prays for the relief, as demanded in his orig-

inal petition, against the said Alla D. Traer; that she be made a party defendant; that she account to this plaintiff for the share of the property belonging to this plaintiff which the said John W. Traer turned over to her; that the judgment against her be joint and several with her co-defendant as the court may ascertain the several co-defendants are interested in the said premises and property, and that the court grant such other and further relief as shall be in accordance with justice and equity.

Duly verified.

Afterwards, on the 5th day of December, 1879, the defendant, Alla D. Traer, filed her answer, as follows:

For answer to plaintiff's petition herein and the amendment thereto making her a defendant herein, this defendant, Alla D. Traer, states:

1. She adopts the answer of the other defendants herein to the original petition, and makes the same her answer thereto, as fully as though the same were herein set forth *in hoc verba*, with
42 this addition: that James Armstrong purchased the stock and all accrued dividends thereon mentioned in said petition and answer for this defendant, and took a written assignment thereof in blank, which was afterwards filled up with the name of this defendant, and the same filed for transfer with the trustees of the company, and duly recognized by said trustee. Said assignment of accrued dividends and stock cost her about $3,000.

2. She denies each and every allegation contained in the third paragraph of the amendment to plaintiff's petition.

3. She has no knowledge or information sufficient to form a belief as to any of the matters or things stated in the fourth paragraph of the amendment.

4. She denies each and every allegation contained in the first paragraph of the amendment following paragraph marked No. 4.

5. For answer to the second paragraph of said amendment following the paragraph marked No. 4 therein, she says: It is true that through the agency of James Armstrong, J. Nelson Tappan made a blank assignment of said stock and all accrued dividends thereon, and delivered the same to James Armstrong; the said James Armstrong forwarded the same to M. Howard, an attorney employed by this defendant through Traer Bros.; that the said M. Howard proceeded to Cedar Rapids, the headquarters of the Construction Co., and collected the accrued dividends and interest due on said stock, amounting to about $11,913.75, and she denies each and every other allegation in said paragraph contained.

6. For answer to the third paragraph in said amendment following the paragraph marked No. 4 therein, she says: It is true that said certificate of stock was about May 8th, 1876, presented to J. W. Traer and his co-trustee for transfer to this defendant, which transfer was entered and recognized by said trustee; that she was
43 then and thereafter owner of said stock and entitled to all future dividends thereon, and was so recognized by said trustees. All other matter in said paragraph is denied.

7. She denies the fourth and fifth paragraphs in said amendment following the paragraph No. 4 therein.

8. She denies paragraph marked No. 6 in said amendment.

9. She admits a demand upon her as alleged in the paragraph marked No. 7 in said amendment, and a demand upon J. W. Traer as set forth in his answer. She denies all other matter in said paragraph.

10. For further answer defendant says that plaintiff's pretended right of action herein accrued in favor of plaintiff's assignor, J. Nelson Tappan, as trustee in bankruptcy of plaintiff's estate more than two years before the commencement of this suit against this defendant, and more than two years before she was made a party defendant herein, and that this action is fully barred as to her by the provisions of the act of Congress in that behalf, and was so barred before she was made a party defendant herein.

11. Further answering, defendant says that she purchased said stock and all accrued dividends thereon, of J. Nelson Tappan, trustee in bankruptcy of the estate of Henry Clews, the said Tappan being at the time of her purchase the absolute owner, as such trustee, of said stock and accrued dividends, and the said Tappan duly assigned said stock and accrued dividends by his written assignment, as will appear by reference to copies of said stock certificate and said assignment which are hereunto annexed, marked Exhibits "A" and "B" respectively, and made a part hereof; that she purchased said stock and dividends at an expense of about $3,000, a large part of which was received by said J. Nelson Tappan, trustee; that the said Tappan has at no time disaffirmed said assignment, or in any manner sought to avoid the same, but has affirmed and ratified the same by retaining all of the money paid to him therefor by this
44 defendant without complaint or objection or offer to refund the same, and that plaintiff's pretended assignment was procured without any substantial consideration to enable him to stir up litigation, and such pretended assignment conveys no interest whatever in said stock or dividends to the plaintiff; nor has plaintiff at any time tendered or offered to place this defendant in *statu quo* by offering to repay to her the money which she paid said Tappan for the assignment of such stock and dividends.

Duly verified.

EXHIBIT A.

Number 40. Shares 50.

Cedar Rapids Northwestern Construction Co.

This is to certify that Henry Clews, Esq'r, [is] entitled to fifty shares of one thousand dollars each in the capital stock of the Cedar Rapids Northwestern Construction Co., on which eighteen per cent. has been paid subject to additional assessments which, as paid, will be endorsed hereon also subject to the articles of association and by-

laws, and is transferable only on the books of the company in person or by attorney upon the surrender of this certificate.

Cedar Rapids, Iowa, May 1st, 1871.

D. W. C. ROWLEY,
Secretary.
JNO. F. ELY, *President.*

Capital stock, $500,000; shares, $1,000 each.

[On the back of said certificate was endorsed the following:]

In addition to the within there has been paid on this certificate fifty-five per cent.

Cedar Rapids, Feb. 2d, '75.

D. W. C. ROWLEY, *Sec.*

EXHIBIT B.

For value received, I do hereby sell, assign, and transfer to
45 Alla D. Traer —— shares of the within-mentioned capital stock, together with all rights and dividends declared, J. N. T., and do hereby constitute and appoint ——— attorney to transfer the said stock on the books of the company.

Dated March 4th, 1876.

(Signed) HENRY CLEWS,
P'r J. NELSON TAPPAN, *Trustee.*

In presence of—
(Signed) R. A. SOUTHWICK.

Afterwards, on the 3d day of February, 1880, plaintiff filed his reply to answer of Alla D. Traer, as follows:

The plaintiff, replying to the answer of Alla D. Traer, so far as the same contains new matter, denies each and every allegation therein contained except as such allegations are consonant with the statements contained in the plaintiff's petition and amendment thereto.

And plaintiff, further replying, states that it is not true that the plaintiff's assignor, J. Nelson Tappan, signed and delivered to James Armstrong the certificate of stock No. 40, copied and attached to said defendant's separate answer, in the manner and form as set forth in the said separate answer, marked "Exhibit B." That the copy of assignment attached to the said answer is of an original partly written and partly printed. That all of the said Exhibit B is printed after the words beginning "For value received," except *except* the words "Alla D. Traer," "together with all rights and dividends declared J. W. T.," "March 4th, 1876," and the signatures. That when the said J. Nelson Tappan signed an assignment of the said shares of stock belonging to the estate of this plaintiff when in bankruptcy, no writing was written in said assignment, except the date words and signatures; that the said assignment when executed and delivered to James Armstrong, as stated in plaintiff's
46 amended petition, did not contain the words "together with all rights and dividends declared J. W. T." That the said words

were written in said assignment after the same left the hands of the said J. Nelson Tappan, by a hand not in the employ or under the control of this plaintiff or the said J. Nelson Tappan, his assignor, and without the knowledge, consent, or authority, of the plaintiff or his assignor, and the same has not since been ratified or in any manner confirmed.

Duly verified.

On the 17th day of January, 1880, the defendant filed two motions to suppress depositions as follows:

The defendants move the court to suppress portions of the depositions of Henry Clews and J. Nelson Tappan, taken before James T. Randolph, a notary public, as shown by the following assignments:

I.

1. To suppress the answer of Clews to interrogatory number two, because said interrogatory is leading, and because both the interrogatory and answer assume the very thing in controversy herein, namely, that the transaction in controversy is fraudulent, and that Mrs. Alla D. Traer participated in the fraud, and said answer states no grounds or facts whatever upon which to base such assumption; and because said answer is hearsay.

2. The defendants move to suppress the answer of said witness to interrogatory number three, because based upon interrogatory number two, and the answer thereto, and for the same reasons urged against interrogatory number two and the answer thereto.

II.

Said defendants move to suppress the answers of J. Nelson
47 Tappan to interrogatories numbers two and three for the same reasons urged against the answers to interrogatories two and three in Clews' deposition.

HUBBARD & CLARK,
Att'ys for Defendants.

I.

The defendants, except Alla D. Traer, move to suppress the depositions of J. Nelson Tappan, Henry Clews, and Austin Corbin, taken before Thomas H. Barowsky, a notary public, upon the following grounds:

1. The commission to take said depositions is not directed to said Barowsky by his individual name and official style, with the name of the State and county in which he is a notary, as required by section 3725 of the Code of Iowa.

2. Because no jurat is attached to either of said depositions, showing that they were subscribed and sworn to in the usual manner, as required by section 3735 of the Code.

II.

Said defendants move to suppress the said deposition of J. Nelson Tappan upon the following grounds:

1. The said Tappan has failed and refused to answer the cross-interrogatories propounded to him, and has intentionally evaded the answering of such cross-interrogatories, particularly cross-interrogatories two, three, and four, failing and refusing to state fully the consideration paid by Clews for his pretended assignment; and cross-interrogatories three and four, in failing to annex copies of his accounts and reports, as therein required, upon the pretense that he could not take the time to run through his accounts and reports, and annex copies, as requested.

2. Because the said Tappan refers to a certain bond given him by Clews in part consideration for his pretended assignment, and fails and refuses to annex a copy of said bond to his deposition, as
48 required by the Code, Sec. 3736, and shows no sufficient reason for not doing so; and because the refusal to annex a copy of said bond is an intentional suppression of fact, as to the consideration paid by Clews for his assignment, which is distinctly inquired into by cross-interrogatories numbers two, three, and four.

III.

Said defendants also move to suppress the deposition of Austin Corbin, taken before the said Barowsky, because the cross-interrogatories annexed to the commission were not propounded by the commissioner to said Corbin.

IV.

Said defendants also move to suppress the deposition of Henry Clews, taken before said Barowsky, upon the following grounds:

1. The said Clews fails and refuses to answer the cross-interrogatories propounded to him, and designedly evades answering said cross-interrogatories, particularly cross-interrogatory number one, as to the consideration paid for his assignment from Tappan.

2. Because the said Clews, in answer to cross-interrogatory one, refers to a certain bond given by him in part payment for his assignment from Tappan, and does not annex a copy thereof to his deposition, nor show any reason for his failure to do so, and thereby suppresses the fact called for by defendants as to the consideration paid by him for his assignment from Tappan.

V.

Said defendants move to suppress the answers to the following direct interrogatories in the deposition of J. Nelson Tappan, taken before the said Barowsky:

1. The answers to the 6th and 7th of said interrogatories, and each of them, because immaterial, incompetent, and foreign to the issues.

49 2. The following language in answer to direct interrogatory 9, namely: "Claiming to act for J. W. Traer," because the

same is immaterial, incompetent, and hearsay, and not responsive to the question. And the defendants further move to suppress all of the remainder of said answer, because immaterial and incompetent, and because the certificate and assignment therein mentioned are the best evidence of what they contained.

3. The answer to interrogatory number eleven, because immaterial, incompetent, and foreign to the issues, and because the assignment itself is the best evidence of what it contains. There is no issue as to the contents of the assignment.

4. The answer to interrogatory number fifteen, so far as it gives conversations with Southwick, because immaterial, incompetent, and hearsay, and because the witness shows that Southwick was his own employee and clerk and not the agent of Traer, and because there is no showing anywhere that Southwick was the agent of Traer. Also, to strike out the pencil memorandum annexed as Exhibit No. 5, except so much as is in Traer's handwriting, because it is not shown in any manner, except by hearsay, that Traer had anything to do with the preparation of such exhibit, and because the answer of the witness and the exhibit itself show that the paper has been tampered with and changed since it was made, and it is not shown when, or by whom; and because said exhibit and the statements of the witness in relation thereto are not responsive to the question.

5. The answer to interrogatory number twenty-two and Exhibit No. 9 referred to therein, because immaterial, incompetent, and hearsay, and because said Exhibit No. 9 is in no manner verified, or shown to be true by the person who made the same, and is not a copy of any book authorized by law to be given in evidence, nor of an entry made by a deceased person against his interest.
50 Also to strike out Exhibit No. 5 with reference thereto, for the same reasons already urged touching said exhibit.

6. The answer to interrogatory number twenty-three, because immaterial, incompetent, and foreign to the issues, and because the assignment executed by the witness is the best evidence as to what he thereby sold, and said assignment cannot be changed or varied by parol.

7. The answer to the 25th interrogatory, because immaterial, incompetent, and foreign to the issues, and because the effect of the assignment can neither be enlarged nor limited by anything stated by the witness at the time he delivered it, and because said answer is in part not responsive to the question.

8. The answer to the 27th interrogatory, because immaterial, incompetent, and hearsay, it not being shown that defendants, or any person acting for them, gave the information referred to in this answer.

9. The answer to the 29th interrogatory, because immaterial and incompetent, and because both the interrogatory and answer assume a conversion of dividends by the defendants, and witness swears to it as a conclusion, generally, giving no facts upon which to base such conclusion; and because said answer is largely hearsay.

VI.

Said defendants move to suppress the following answers of Henry Clews to direct interrogatories in his deposition taken by said Barowsky:

1. The answer to the 5th interrogatory, because immaterial and incompetent; and all that portion of said answer relating to the money paid by the plaintiff on his stock, with Exhibits A 1 to A 29, because immaterial, incompetent, and not responsive to the question.

2. The answer to interrogatory number 8, because immaterial, incompetent, and foreign to the issues, and because it is
51 not shown that Tappan knew of the conversations therein detailed when he assigned the stock certificate and accrued dividends.

3. The answers to interrogatories 9, 10, 11, 12, 13, 14, and 15, and each of them, for the same reasons assigned as to the answer to interrogatory number 8.

4. The answer to interrogatory number 21, because immaterial, incompetent, foreign to the issues, and hearsay.

5. The answer to interrogatory 23, beause immaterial, incompetent, foreign to the issues, and hearsay.

6. The answer to interrogatory number 24, because, so far as the knowledge of the witness is concerned, it is immaterial, incompetent, and foreign to the issues; so far as the knowledge of Tappan is concerned, it is hearsay.

7. The answers to interrogatories 25 and 26, for the same reasons assigned as to the answer to interrogatory 24.

8. The answer to interrogatory 27, because immaterial, incompetent, and hearsay, and because a simple matter of conclusion of the witness and a sworn argument in his behalf.

9. The answer to interrogatory number 28, because immaterial, incompetent, foreign to the issues, and because it is impossible for the witness to state what induced Tappan to transfer the stock.

10. The answer to interrogatory 30, because immaterial and incompetent, and because the assignment to the plaintiff is the best evidence as to what his rights are.

11. The answer to interrogatory 32, because immaterial, incompetent, and hearsay.

VII.

The defendant, Alla D. Traer, moves to suppress said depositions, and each of them, as to her, because the commission to take
52 the same was issued before she became a party to the suit, and she has had no opportunity to cross-examine said witnesses, or either of them.

Afterwards, on the 3d day of February, 1880, the defendants filed a motion to suppress depositions as follows:

The defendants move the court to suppress the depositions of John F. Ely and D. W. C. Rowley taken herein before R. H. Gil-

more, Esq., a notary public, and all proceedings before said notary, upon the following grounds:

1. The said R. H. Gilmore is one of plaintiff's attorneys in this cause, and was, at the time he took said depositions, in partnership in the practice of law with Frank G. Clark, Esq., one of plaintiff's attorneys herein.

2. The defendant, Alla D. Traer, moves that said depositions be suppressed as to her, because taken before she was a party to the suit and she had no opportunity to cross-examine said witnesses.

3. The defendant, Alla D. Traer, also moves to suppress the depositions of M. Howard, James Armstrong, and the depositions of John W. Traer and William Greene taken before C. J. Deacon, Esq., commissioner, before she was a party to the suit, because taken before she was a party to the suit and without opportunity to her to cross-examine said witnesses.

Supported by the following affidavit:

John W. Traer, being duly sworn, deposes and says that he is one of the defendants herein; that he knows R. H. Gilmore, Esq., the notary public before whom the depositions of John F. Ely and D. W. C. Rowley were taken herein; that the said Gilmore was, at the time of taking said depositions, in partnership in the practice of law with Frank G. Clark, one of plaintiff's attorneys herein, and
53 said depositions were taken at the law office of said Gilmore & Clark; that he is the same R. H. Gilmore who now appears as one of plaintiff's attorneys herein, and he appeared as one of plaintiff's attorneys before C. J. Deacon, Esq., the commissioner, and took part in the examination of witnesses whose depositions were taken before said commissioner.

Subscribed and sworn to by— J. W. TRAER.

And on the same day said motion was overruled by the court as to the first division thereof, and sustained as to the second and third divisions thereof; to which the defendants excepted.

And on the same day the court sustained divisions III and VII of defendants' motion filed January 17th, 1880, above set forth, and overruled said motion as to divisions I, II, and IV thereof, and defendants excepted. The decision as to the remainder of defendants' motions to suppress depositions was reserved until the trial of the case.

Afterwards on the said 3d day of February, 1880, the defendant, Alla D. Traer, waived the suppression of depositions against her and consented that the same might be used on the trial, but she is not to be charged with the same as costs in any event.

Afterwards on the 3d day of February, 1880, the trial of this cause was commenced, upon which the plaintiff, by leave of court, filed further amendment to his petition as follows:

The plaintiff asks leave of court to amend his petition in which

he sets forth his cause of action against Alla D. Traer, by adding thereto as follows:

1. That as to the matters and things herein set forth as a cause of action against the said Alla D. Traer, the said fraudulent transactions with which she was connected and her part therein were studiously concealed from the plaintiff and his assignor, and
54 he had no means of discovering the same, nor had his assignor any means of discovering the same until the same were disclosed upon the examination of John W. Traer, as witness in this action, on the 24th day of September, 1879; that the plaintiff and his assignor did not know of the said fraud and the fraudulent acts of the defendant, Alla D. Traer, until the same were made known on the said examination.

2. And the plaintiff further states that he hereby amends his prayer for relief by offering that the court, after ascertaining the amount that is due the plaintiff from the defendants, may deduct from the gross amount so found due and interest thereon the sum and the interest thereon that the court may find was paid by the defendants, or either of them, to J. Nelson Tappan, the plaintiff's assignor, at the time the said certificate of stock was assigned in blank by said Tappan and delivered to the attorney of Alla D. Traer and John W. Traer.

Wherefore plaintiff demands the relief as set forth in the petition and amendments thereto, as modified by the offer above.

Duly verified.

And leave was thereupon granted by the court to defendants to answer said amendment.

Afterwards on the said 3d day of February, the following stipulation was filed:

It is stipulated that the hearing and argument of this cause be had before Hon. John McKean, judge of said court, at Cedar Rapids, in said county, commencing Tuesday, February 3d, at 9 o'clock a. m., and continuing from day to day until the hearing and argument are completed. Depositions may be filed by said judge, together with motions to suppress the same, or exceptions thereto, with the same effect as though filed in open court or by the clerk thereof, and the same action may be had thereon, and on all other motions and interlocutory matters, before said judge, as in open court,
55 and the acts and doings, rulings, and decisions of said judge on the hearing before him shall be spread upon the records of the court, and shall stand in all respects as the action of the court; all of the parties to said suit hereby expressly waiving all objection for irregularity, if any there be, because of such hearing, action, and decisions before the said judge instead of the court; final decree shall be entered by the court as in other cases, upon the hearing and argument herein provided for before said judge, as though the same was made in open court.

And thereupon the trial of the cause was continued at Cedar Rapids until the 7th day of February, when it was resumed at the

court-house at Marion. And the evidence being all adduced on both sides, the argument was commenced by both plaintiff and defendants; whereupon, on said 7th day of February, 1880, the cause was submitted on the pleadings and evidence, and, by consent of parties, to be argued further in vacation, and decision of the judge to be in vacation as of the last day of this term, with right of either party to except and appeal.

Afterwards on the 9th day of February, 1880, in vacation, the argument of the cause was resumed before the Hon. John McKean, judge of said court, at Cedar Rapids; when the plaintiff asked leave of said judge to file a further amendment to his petition, which application was resisted by defendants. The said judge granted plaintiff leave to file his amendment as follows, to which the defendants at the time excepted and protested:

Plaintiff asks leave to amend his petition making Alla D. Traer a party defendant, as follows:

Second division.

1. Plaintiff hereby alleges all that he set forth in his original petition filed herein, and makes the same part of this paragraph as fully as if set out herein *in haec verba*.

2. Plaintiff further says that said John W. Traer and Alla
56 D. Traer, knowing that there was, at the time said Construction Co. was dissolved, and thereafter had continued to be, the sum of $10,500, in dividends standing on the books of said Construction Co. in favor of the estate of this plaintiff, then in bankruptcy, and knowing that there was a large amount of valuable assets owned by said company to the amount of several thousand dollars, of which the one-tenth part belonged to the said estate in bankruptcy, as set forth in plaintiff's original petition, and knowing that J. Nelson Tappan, said assignee in bankruptcy of said estate, was ignorant of the said credit for dividends and of the value of the assets of said company, corruptly conspired, confederated, and agreed together to cheat and defraud the estate of said Henry Clews, in bankruptcy, out of the dividends, interest, equities, and other property held in trust by said John W. Traer, as trustee for the stockholders aforesaid, to the amount in the aggregate of twenty to thirty thousand dollars, and to corruptly convert the same to their own use.

3. Plaintiff further says that on or about the 4th day of February, 1876, and for 18 months thereafter, the said John W. Traer was still continuing to act as the trustee holding in trust the property of the stockholders of the late Cedar Rapids Northwestern Construction Co.; that on or about the said 4th day of February, 1876, at the city of New York, said John W. Traer, still continuing to act as trustee aforesaid, falsely and fraudulently represented to the said J. Nelson Tappan, trustee in bankruptcy aforesaid, the condition of the assets of said Construction Co., knowing that said Tappan was ignorant of the condition of the same, falsely underrating the value of

said assets, falsely stating the amount of the collections that had been made, and suppressing and concealing the fact of about $15,000 in cash, then in his hands as trustee, and falsely and fraudulently suppressing and concealing from said Tappan the fact of a credit of $10,000 standing to the credit of said estate in dividends on the books of said Construction Co.

57 4. That the said Traer, still acting as trustee aforesaid, on or about the said 4th day of February, 1876, at the city of New York, referred the said Tappan for further information in detail to one James L. Bever, whom said Traer knew to be ignorant of the affairs of said trust and the condition thereof, and who the said Traer knew could only obtain the necessary information except by applying to him, the said Traer. That upon the said Traer's return to Iowa the said Bever, having received the inquiry of said Tappan, requested said Traer to furnish him, the said Bever, with the detailed statement of the assets in the hands of the said trustee, and the information necessary in order to advise the said Tappan of the value of the interest that he, as trustee in bankruptcy, had in said trust. That thereupon, to wit, on or about February 15, 1876, said Traer, still acting as said trustee, furnished said Bever with a pretended statement, as requested, to be sent to said Tappan; that in said statement the said Traer falsely stated the condition of the affairs of said trust, and fraudulently represented said trust, and fraudulently suppressed information as to about $15,000 in cash on hand, and falsely stated the amount of cash collected in the sum of about $17,000, and fraudulently suppressed and concealed the fact that there was then standing to the credit of said bankruptcy estate the sum of $10,500 as dividends, and whatever interest had legally accrued. That in divers other conversations and letters to said Tappan falsely and fraudulently represented said assets, and suppressed and concealed all information as to said dividends.

5. That the said Traer (while still acting as trustee of the property of said stockholders), in furtherance of said conspiracy, at the city of New York, and before his return to Iowa, as stated in paragraph 4, on or about February 4, 1876, engaged and enlisted one James Armstrong, of said city, as co-conspirator and confederate with said Traer and wife in cheating and defrauding the said estate in bankruptcy. That the said Armstrong, availing himself of the information obtained by said Traer personally as to the de-

58 sire of said Tappan to sell the interest of said bankruptcy estate in the property held by said Traer in trust, as aforesaid, and acting for the said Traer, submitted a proposition to purchase the said interest for the sum of $1,200.

6. That the said Tappan, relying upon the truthfulness of the statements made by the said Traer personally, and through said Bever, accepted the said proposition of said Armstrong made while so acting for said Traer. That the said Tappan, relying upon the truthfulness of the said representations made direct by said Traer, and sent by him through said Bever, and ignorant of the suppression and concealment of facts by said Traer, and believing from said false and fraudulent representations and suppressions of facts

that said sum of $1,200 was all said interest was worth, was induced to sign his name to the back of the certificate of stock which the said Traer had caused to be sent to said Tappan for that purpose, and thereby apparently to transfer all the interest of said bankruptcy estate in the property, assets, and dividends in the hands of said Traer, as set out in Exhibit B to defendant Alla D. Traer's separate answer. That thereupon he delivered said certificate to said Armstrong.

7. That the said signature to the back of said certificate and delivery of the same, so obtained by fraud and false representations of said Traer, conveyed no interest whatever to said Armstrong or to the said Traer and wife together or individually, or to any other person who represented them, or either of them.

8. That the said Armstrong on the 10th day of March, 1876, pretending to be the owner of said certificate, transmitted the same by mail directed to one "Martin Howard, Esq., Cedar Rapids, Iowa," who had previously been enlisted by the said Traer for the purpose hereinafter stated, as one of the confederates and conspirators in cooperating with said Traer and wife in carrying forward the said fraud against the said estate in bankruptcy.

9. That the said Howard, so employed by the said Traer while still acting as trustee aforesaid, proceeded, on or about the
59 20th day of March, 1876, to the city of Cedar Rapids, Iowa, and having said certificate of stock in his possession, and pretending to act for said Armstrong, in the name of said Armstrong presented the certificate of stock, with the endorsement thereon, to said Traer as trustee aforesaid, and demanded the payment of the said dividends and interest thereon to himself as the attorney of said Armstrong.

10. That the said Traer then knew that said Armstrong had no interest in said certificate of stock; that he had no interest in the property which he, the said Traer, was holding as trustee; and the said Traer knew that said Armstrong had obtained the signature of said Tappan to the back of said certificate through the false and fraudulent representations and concealments of himself, the said Traer; and the said Traer knew that the said Howard was the pretended attorney of the co-conspirators and confederates of himself and wife in defrauding the estate of the said Henry Clews in bankruptcy.

11. Upon the demand of said pretended attorney acting for the pretended owner of said certificate of stock, and the pretended owner of whatever equities and dividends stood upon the books of said company, and upon the exhibition of said certificates so obtained by fraudulent representations, the said Traer, while still acting as trustee as aforesaid, paid over the sum of $11,913.75 into the hands of the said Howard, and took the receipt of said James Armstrong therefor, knowing that the said Armstrong had no interest whatever in said dividends or the certificate of stock which the said Howard presented.

12. That the said Howard thereupon deposited said money in the bank of Traer Bros., at Vinton, Iowa, of which bank the said John

W. Traer and one J. C. Traer, his brother, were the joint owners; that the said J. C. Traer had no interest whatever in the said dividends or the said certificate of stock, but received said dividends into the bank of which he was part owner, for the purpose of
60 paying the same into the hands of Alla D. Traer, and for the purpose of assisting his brother, John W. Traer, and Alla D. Traer, his wife, in defrauding said estate in bankruptcy, and to prevent the detection thereof.

13. That the said J. C. Traer thereafter paid the said $11,913.75 to the said Alla D. Traer, and handed her the said certificate of stock.

14. That the said Traer, as trustee, entered the said certificate of stock upon the books kept by him, "together with all equities and dividends declared," as transferred to the said James Armstrong; that the said entry was made March 20, 1876, by said Traer, knowing that the said Armstrong was not the owner of said certificate, that he was not the owner of said "equities and dividends declared," and knowing that he had no interest in the transaction whatever; that the said entry was so made in furtherance of said conspiracy to defraud said estate in bankruptcy.

15. That thereafter, to wit, May 8, 1876, said Traer with his own hand wrote the name of Alla D. Traer in the blank of the assignment left for that purpose, and thereupon made an entry on the books kept by him, "recognizing" said transfer to said Alla D. Traer.

16. That thereafter the said Traer purchased, in the name of his wife, all the interest of all the remaining joint proprietors of the property in the hands of the said trustee Traer, and the affairs of said trusteeship were closed and all the property of the stockholders of the late Construction Co. was delivered to said Alla D. Traer, who has since retained the same.

17. Plaintiff states that the connection of said Alla D. Traer with said fraudulent transaction was first discovered by his attorney, Frank G. Clark, Esq., on or about September 24, 1879, and that the plaintiff had no previous knowledge thereof.

18. That the said Alla D. Traer entered upon said fraudulent transaction at the suggestion of John W. Traer, still a trustee;
61 that in all the transactions in which her name was used, in the pretended transfer, in the payment of the dividends to her, and in the paying out of money by her, the said Alla D. Traer acted upon the judgment and knowledge of her husband, John W. Traer, who, during all the said transactions, was acting as trustee of the stockholders of said Construction Co.

19. That in accordance with his arrangement with said John W. Traer, said Armstrong secured said Tappan's signature to the back of said certificate of stock, and paid said Tappan $1,200; that pursuant to said fraudulent arrangement he sent the said certificate to Martin Howard, Cedar Rapids, with orders to collect dividends; that Armstrong so continued to act when said Armstrong receipted for said dividends. That, whatever of interest said Armstrong secured in his part of said fraud he secured the same for John W.

Traer, still trustee. That whatever of claim or interest said Alla D. Traer acquired the same was obtained from John W. Traer, and she acted upon his knowledge and judgment.

20. That at the time when said Traer, through his co-conspirator Armstrong, was securing the name of said Tappan to the back of said certificate of stock for his own use, and at the time he was inserting his wife's name in the said transfer of said certificate, he was acting at the same time as the volunteer agent of said Tappan in finding a purchaser of the interest of said estate in the property held in his hands as trustee of the property of the stockholders of said dissolved company.

Wherefore plaintiff makes the offer heretofore made that the amount that may have been advanced in the pretended purchase of the interest of said estate in bankruptcy may be restored to whomsoever shall be found by the court to have advanced the same, and that the plaintiff may have the relief prayed for in his original petition and the amendment thereto, and such other and further relief as shall be in accordance with equity.

Duly verified.

62 Whereupon the defendants, on said 9th day of February, filed before said judge their answer to said amendment to the petition, as follows:

1. The defendants now here protest that the Hon. John McKean, judge, etc., had no power or authority to permit or allow the amendment to plaintiff's petition, filed February 9th, because, they say, that the case was finally and fully submitted on the 7th day of February, 1880, in open court, and the only purpose and object of further proceedings in vacation was to complete the argument then already begun. A copy of said submission as entered in the minutes of the court and of record is as follows:

"Feb'y 7. Submitted on pleadings and evidence and by consent to be argued further in vacation, and decision of judge to be entered in vacation as of last day of this term, with right of either party to except and appeal."

And thereupon immediately after the foregoing entries, and on the same day, to wit, February 7th, 1880, the said court adjourned *sine die.*

The defendants therefore answer the said amended petition under protest, not admitting or confessing any right of the plaintiff to file the same or the court to permit the same to be filed.

2. Defendants hereby allege everything contained in the answer of John W. Traer and other defendants filed herein, and also everything alleged and stated in the separate answer of Alla D. Traer, and ask that the same be taken in all respects, the same as though herein set out.

3. The second paragraph of said amendment is denied.

4. It is true that John W. Traer was on the 4th day of February, 1876, and for eighteen months thereafter, one of the trustees of the

said Construction Co. All the remainder of said paragraph three is denied.

63 5. It is true, as stated in the fourth paragraph, that defendant, John W. Traer, referred the said Tappan to James L. Bever and others. It is also true, as stated in said paragraph, that said John W. Traer did furnish to James L. Bever a statement of the assets in the hands of said trustee, and that the said statement was true and correct. All other allegations in said paragraph are denied.

6. Paragraph fifth is denied.

7. So much of paragraph sixth as states that Tappan assigned and transferred the stock and the dividends at Armstrong's request is true. All other allegations in said paragraph, and all allegations of fraud and conspiracy therein contained, are denied.

8. The seventh paragraph is denied; and on the contrary defendants aver that the stock and dividends were transferred to the defendant, Alla D. Traer, and that she obained a valid title to the same by reason thereof.

9. The eighth paragraph is true so far as it states that the certificate of the Clews stock, duly assigned, was transmitted by Armstrong to Howard; and all other allegations of said paragraph are denied.

10. It is true that the said Armstrong sent the certificate of stock to Howard, who presented the same and received the dividends, as stated in paragraph nine, but all the alleged pretenses and insinuations in said paragraph are denied.

11. The tenth paragraph is denied, except this: It is true that said Traer then knew that Alla D. Traer was the owner of said certificate of stock.

12. The eleventh paragraph is denied, except this: It is true that Traer paid over to Howard the sum therein stated, who paid the same to J. C. Traer as the agent of Alla D. Traer.

13. The twelfth paragraph is denied, except as admitted in the foregoing paragraph of this answer.

64 14. Paragraph thirteen is true.

15. The fourteenth paragraph is admitted, except this: That the entry of said stock was not made in furtherance of any conspiracy to defraud the estate in bankruptcy of the plaintiff.

16. Paragraph fifteen is admitted to be true.

17. The sixteenth paragraph is not true as there stated. It is true that Mrs. Alla D. Traer purchased a portion of the stock of the Construction Co. prior to her purchase of the Clews stock, and a portion of it afterwards; and a portion of such stock was not purchased by her at all, but only the equities, with some exceptions, pertaining thereto. It is true that the affairs of said trusteeship were closed up as therein stated. It is also true that most of the business, except the purchase of the Clews stock, was transacted by John W. Traer as the agent of his wife, Mrs. Alla D. Traer. Everything in said paragraph inconsistent with this statement is denied.

18. The defendants deny the fraud referred to in the seventeenth paragraph, and deny that Fank G. Clark, Esq., discovered any such fraud.

19. The eighteenth paragraph is denied, except the fact that John W. Traer was trustee of the Construction Co.

20. This much of the nineteenth paragraph is true: Tappan signed the transfer of the stock and dividends to Armstrong, and Armstrong paid him therefor $1,200, and that Armstrong sent the certificate to Howard, who collected the dividends. All other allegations in said paragraph are denied.

21. The twentieth paragraph is denied, except that Traer was acting as one of the trustees of the company.

22. The defendants, for further answer to the amendment of plaintiff filed on the 9th of February, 1880, say that the new cause of action therein alleged, to wit, admitting the transfer of the
65 dividends as well as the stock of the Cedar Rapids Northwestern Construction Co. by the said Tappan, as trustee of the estate of Clews, bankrupt, and seeking to set the same aside because obtained by false and fraudulent representations made by Traer prior to such transfer, is barred by the statute of limitations, because, defendants say, that more than two years has elapsed since said pretended cause of action accrued, prior to the filing of said amendment.

23. These defendants, further answering, submit and insist that the plaintiff, in and by his petition and the amendments thereto, makes a supposed and pretended case so vague, indefinite, contradictory, and in the alternative that no relief in equity can be had or grounded thereon, in this: The plaintiff, in and by his petition and amendments thereto, alleges and pretends that the accrued dividends upon the fifty shares of stock in the C. R. N. W. Construction Co., mentioned in said petition and amendments, were converted by defendants in their own use without any assignment thereof or right thereto whatever; and also alleges and pretends in and by his said petition and amendments that said dividends were assigned to the defendant, Alla D. Traer, by J. Nelson Tappan, but that said assignment was procured by fraudulent representations and suppressions of fact; which allegations and pretenses on the part of plaintiff are contradictory and alternative statements of his pretended cause of action and title to relief, and bar him of any right or title to relief on such vague, uncertain, indefinite, and contradictory allegations.

Duly verified.

And afterwards, on the 2d day of April, 1880, at Cedar Rapids, Iowa, the argument of the cause was concluded before the said judge.

On the trial of said cause evidence was introduced as follows:

PLAINTIFF'S EVIDENCE.

Deposition of J. W. Traer.

Commenced Sept. 23, '79; concluded Oct. 6, '79.

I am one of the defendants in this suit. My first connection with

the Cedar Rapids Northwestern Construction Company, was
66 as a subscriber for ten shares of the stock at its organization.
At the time of its organization I may have been a director; I am not clear. The shares were $1,000 each. I was a stockholder from its organization to the time of its dissolution; a director part of the time, and an agent or trustee holding some real estate at Greene, which was purchased for them. I know of no other connection or official position I had. I was collecting agent for the B., C. R. & M. R'y Co. from 1871 until February, 1875. I here attach copy of resolution showing my authority, as Exhibit A.

The Construction Co. went into dissolution February, 1875. What led to it will more properly appear from the records, as will also the situation of the company, which, if I remember rightly, is fully upon the records. Approximately I would say the indebtedness of the company was from $25,000 to $30,000, as near as I can remember. I had not the keeping of the official records of the company, and have no official knowledge of it, only as it has presented itself since. The leading items would be the bills payable of the company, an old accrued dividend since paid, legal expenses, and right of way. The notes or bills payable of the company aggregated about $9,000, and were principally for dividends previously declared by the company and not paid; amount paid the assignee of the trustee of the Clews estate on account, as certified by the secretary, March, 1876, eleven thousand and some dollars, I don't remember exactly; it will appear from the vouchers. Right of way, about $2,500; attorneys' fees in litigation, about $4,000; salaries of trustees and collection agent, about $3,500; dividends to stockholders, about $12,000. The three last items accrued since the dissolution. At the time of the dissolution the so-called assets of the company, of which they had undisputed title, were the remnants of the town property at Greene. There were village lots at Traer, Dysart, Maynard, and perhaps at some other points I don't remember, unsold, which title came to me individually as agent of the B., C. R. & M. R'y Co., but which we treated and listed as assets. There were taxes that had been voted the railway Co. in several of the different counties standing in the name of the railway Co., and some notes and judgments, all in the name of the railway Co., the two largest lists being involved
in litigation, that of Fayette and Benton counties, the suits
67 having been brought by the railway Co. All of these matters will appear listed by the secretary in Book A, in his own handwriting, except the taxes, as near as I remember. As to what was the approximate value of all these assets at the time of the dissolution, divested of any question as to who had the right to them, it is very difficult to say, as they were scattered over 200 miles of railway at some 14 to 20 different points, and the remnant of something like $300,000 of aid, out of which the railway Co. had collected and realized as rapidly as possible from 1871, and necessarily of such a character that prudent business men would not want to invest in them. My best recollection is that the railway Co. realized and turned over to the Construction Co., up to the time of the dissolution, about $240,000 of the $300,000 above mentioned. I

think the secretary's record will show a copy of the settlement up to the time of the dissolution.

Int. 9. Was there not an estimate made by the officers and trustees of what these assets would net about the time of the dissolution?

A. No such estimate was made as I know of, aside from the listing of the so-called book of assets. I was present a portion of the time at the time of the dissolution and appointment of the trustees.

Int. 11. Where did this take place, and who were present, to the best of your recollection?

(Defendant objects; that the records of the Co. and of their meeting are the best evidence.)

A. To the best of my recollection they usually held their meetings in the railway office in the Union Bank Block, Cedar Rapids, and I think that was held here. My best recollection is that George Greene, William Greene, S. L. Dows, D. W. C. Rowley, E. M. Greene, J. F. Ely, James L. Bever, A. S. Belt, T. W. Barhydt, J. W. Barnes, and some others, I don't remember now, were present. The meeting was in session a large part of the afternoon.

Int. 12. Who were elected trustees, and with what authority?

(Defendants object; that the records are the best evidence, and that the question is immaterial and incompetent.)

68 A. Myself and Wm. Greene were appointed trustees, with authority, on and after the original signature of a majority of the stockholders was had to their action and accepting the trust in writing upon the record. The acceptance is made by W. Greene and myself by our signatures on the record subsequently.

Int. 13. What was the meeting principally occupied in doing during the afternoon?

(Defendants object; that the records of the meeting are the best evidence. The witness cannot be required to give the proceedings of the meeting from memory, and it is incompetent.)

A. I cannot undertake to say specifically what they were doing. They may have at that meeting considered the report of their own committee, which is spread upon the records of the company. I refer to the committee to whom the report of collections made and statements generally of what they called their assets, and which will all be found on the secretary's record. No particular claims against the company were there discussed that I remember of. The general directions to the secretary will be found in the secretary's record in the resolution appointing the trustees, as near as I remember. There was nothing whatever said at that meeting about Henry Clews or the trustee of Henry Clews. There was nothing said in my hearing about dividends of Henry Clews or his trustees. I knew the company, some time before that, in my absence, resolved upon a dividend prospectively, and which they had no money in the treasury to pay, and, in point of fact, paid no part of it in money. With such stockholders as were in arrears on assessments, of whom I was not one, the dividend was offset as far as they were indebted.

The company executed to me notes for my proportion of the dividend, as well, I think, as to others. I had no immediate knowledge of the transaction at the time, living at Vinton, in Benton county. I had no knowledge about the situation of Mr. Clews' stock, nor that the company was in any way indebted to him or his estate. I refer to any and all attempted cash dividends made by the board that I had any knowledge of.

Int. 21. How many dividends had there been declared by the Construction Company prior to the dissolution, and to which you make reference?

69 (Defendants object that it is incompetent, and the records are the best and only evidence, and the witness cannot be required to state from memory. Question waived.)

A. My best recollection is that there was attempted a dividend of $25,000 and one of $100,000. I cannot remember the dates.

I first noticed an open account with Henry Clews on the ledger of the secretary some months after the trustees were appointed, which seemed open and unsettled. On asking the secretary, he stated that there had been a question as to whether there was anything due on the account, and nothing had been done with it, Judge Greene in particular, as well as others, insisting that the railway company was largely indebted to the Construction Company, and Henry Clews in turn was largely indebted to the railway company, and had held all the railway company bonds, so that the Construction Company had received no bond dividend whatever. The directions to the secretary by the stockholders' meeting appointing the trustees required him to write up his books and certify his accounts of balances, if any, to the trustees. That he never did in the matter of the Henry Clews account, until on demand of the attorney of the assignee of the Henry Clews stock, after consultation with the attorney of the Construction Company, about March 20th, 1876.

Int. 24. Wasn't the question of these Clews dividends the subject of frequent conversation among the officers of the company and the trustees before as well as immediately after the appointment of the trustees?

A. As to the first part, no, emphatically, as answered before. The latter part of the question I have already answered.

I was not more fully conversant with the affairs of the company at the time of my appointment as trustee than any other person. When appointed I had but recently moved into Linn county, and while a resident of Benton county I was here at Cedar Rapids but very seldom, and then but for a short time, and I had no connection whatever with the secretary's books of account. I commenced building my residence here in 1873 or 1874, I don't remember now
70 clearly which. I moved here after my building was complete, very late in the fall of either 1873 or 1874.

Int. 27. How long after the appointment of yourself and Wm. Greene did Dr. Ely take Mr. Greene's place?

(Defendants object; that the records are the best evidence. Question waived.)

A. Some months after; I don't remember; the record will show. The company never took any action that I am aware of after the dissolution. The stockholders had a meeting and accepted Wm. Greene's resignation and appointed Dr. Ely, and the secretary of the company listed what was called the assets, except taxes in the several counties which couldn't be got at. We understood that such rights as the Construction Company had were placed in our control for the purpose of adjustment and final closing up.

Int. 30. What other assets did the company have except those turned over, derived from the B., C. R. & M. Railway Company, at the time of this dissolution?

A. None that I am aware of, except the interest they had purchased at Greene. These assets I was as familiar with, as the agent of the B., C. R. & M. Railway Company, at the time of my appointment as any one could be with anything of uncertain value. As trustees we kept an account of all receipts and expenditures and took vouchers for all payments of money. I have not the books in my possession at the present time. I have the vouchers and final statement and final discharge of the trustees, September 4th, 1877, at which time the trustees turned over the books to the only remaining stockholder, Mrs. A. D. Traer. Mrs. A. D. Traer is my wife. She became a stockholder by exchange with Wm. Greene for fifty-five shares of stock some time about the last of 1875 or first of 1876. The transfer record will disclose dates. I mean the transfer record of the trustees, which immediately follows the secretary's record in the same book. I was the active working trustee and did all the accounting work, and received the compensation of $125 per month for it, for services as trustee and collection agent. The trustees
71 declared their first dividend some time in January, 1876. The amount was $2,000. I cannot now state, without reference to the books, what debts and claims against the Construction Company had been paid and settled at the time of declaring this dividend; I think the bills payable of the company, the right of way indebtedness, and other pressing indebtedness. I cannot state the amount.

(On request of plaintiff's counsel, and to save trouble of issuing subpœna, the books are here produced by Hubbard & Clark, as attorneys for Mrs. A. D. Traer.)

The nearest approximate I can make is $12,000. It was applied on bills payable, right of way, and general expenses, including expenses of litigation. At the time of making this dividend we had made no provision to pay off the dividend declared on the Clews stock, no indebtedness to Henry Clews or to his estate having been certified to us. We knew there was an unsettled account there, as I have stated before. In January, 1876, I think my co-trustee and I decided that we were warranted in paying a dividend at this time, and thereupon we paid it and took vouchers for it. At the time of declaring this dividend I don't remember that there was anything particularly said about the dividends theretofore declared on the Clews stock. I don't remember that the con-

tingency of paying this $10,000 or $12,000 dividend was adverted to in our conversation at the time of declaring this dividend. Other dividends were declared by the trustees as follows: April 3, 1876, $2,000; July 29, 1876, $2,000; October 31, 1876, $2,000; February 19, 1877, $2,000; September 4, 1877, the final dividend, $2,551.36. This second dividend was paid after the Clews dividend was paid.

Int. 46. When did you first ascertain that there was a valid claim for the Clews dividends declared before the dissolution of the Construction Company?

A. The certificate of the secretary certifying the Clews account was presented to the trustees by Mr. Howard, attorney of the assignee, the 19th of March, 1876, and we were advised by A. S. Belt, the attorney of the Construction Company, that the company
72 was legally liable, and on his advice and the secretary's certificate we paid it. Mr. Howard presented the written authority of James Armstrong and requested the transfer. I don't know that I can produce that written authority now; it is so long since that very many of my papers have been misplaced or lost. I have not searched for it, but will, and will produce it in the morning if I find it. I think I was the only trustee that was present to whom the secretary's certificate of the Clews account was presented, March 19, 1876, by Mr. Howard. I think Dr. Ely was absent. I was acting for the trustees, and Dr. Ely afterwards approved the voucher with his official signature. I think this written authority from Armstrong for the collection of these dividends was on a separate piece of paper from the certificate of stock, in the ordinary form of a letter of authority from one person to his attorney. For money to meet this demand at that time I drew on the trustees' cash account at the Union Bank, Cedar Rapids, for $2,000, and a certificate of deposit on the First National Bank, Cedar Rapids, to the trustees, for $1,000, being funds collected by the trustees; and for the remainder, on collections made in Benton county by Traer & Gilchrist, attorneys for the company at Vinton, and on Traer Bros. at Vinton; all being collections recently made in the contested cases for Benton county aid in the supreme court. The money came in in the regular course of business from collections in our hands. At the time of making the January, 1875, dividend by the trustees, there was on hand about $10,000, after deducting the dividend then made. There was about the same on hand December 1st, 1876; about $9,000 November 1, 1875; about $6,500 October 1, 1875; about $3,500 September 1, 1875; about $2,000 August 1, 1875; about $1,000 July 1, 1875. On the first day of March, 1876, there was about $9,000 on hand. About $4,000 collected by Traer & Gilchrist was paid in the day the Clews dividend was paid, March 19, 1876. The $1,413.75 interest on the $10,500 Clews dividend is computed the same as though our note had been executed the same as to other parties, at 10 per cent. I don't remember that there was any particular consultation with other parties interested in the company before deciding to pay this interest. I don't remember that there were any very strenuous objections to paying the interest, as the same rule has been applied to other

stockholders, and the assignee's attorney demanded the
73 same treatment as others had received. We did not pay interest to other stockholders where a note had not been given; other stockholders had got their notes. I am unable to say how Mr. Howard came to the knowledge of this rule of paying interest on dividends.

I have found letter of Jas. Armstrong addressed to Martin Howard which was delivered to me about March 19th, 1876, and herewith present same for copy to be attached to my deposition. (Copy hereto attached as Exhibit B.) The other authority we had for paying over said dividends to M. Howard was the original certificate of stock No. 48, duly assigned in blank by the trustee in bankruptcy of Henry Clews, with an assignment of the accrued dividends on the back of it. I have not the original certificate of stock in my possession. I presume it is in the hands of the owner, Mrs. A. D. Traer. I received the letter, Exhibit B, directly from M. Howard. I can't say why it was directed to him at Cedar Rapids. It was not sent to me direct. I had no correspondence with M. Howard about that time, unless relative to legal business as attorney for Traer Bros., of whom I was a partner. The correspondence, if any, was about legal matters arising at that time. He had not been attorney for Traer Bros. any considerable length of time prior to that.

Int. 70. State the character of this business being transacted for Traer Bros.

(Defendants object, 1st, that the letters are the best evidence, and the witness cannot be required to state their contents; 2d, the question calls for privileged communications between attorney and client. Counsel for defendants advise witness not to answer the question, and the witness declines to answer.)

I was a partner of Traer Bros. at the time of the correspondence with Howard in relation to legal business for Traer Bros., and am now. I had known Howard for some ten years, as a resident of Iowa part of the time, and part of the time of Benton county, where I lived. I think he lived there three or four years while I did. I had met James Armstrong personally but a few months prior to March, 1876; had known him by reputation as an attorney while he was a resident in Iowa some years before. I had met him in
74 New York city about January 1st, 1876. I may have called at his office two or three times while in the city; I don't remember. I had no personal correspondence with him that I retained copies of, and no correspondence unless regarding legal business.

Int. 75. Was that correspondence in relation to this matter now in controversy or pertaining to the affairs of the Construction Company?

(Defendants object, 1st, that the correspondence is the best evidence, and the witness cannot be required to state its contents; 2d, the question calls for privileged communications between client and attorney. Defendants' counsel advises witness not to answer, and the witness declines to answer.)

James Armstrong at this time was attorney for Traer Bros. and for myself. He was employed about the time I saw him in New York, about January 1, 1876.

Int. 78. On what legal business was he employed by you at that time?

(Defendants object; that the question calls for privileged communications between client and attorney.)

A. I decline to answer.

Int. 79. Did you not employ him as your attorney in the matter of the Henry Clews dividends?

(Defendants make same objection as last above.)

A. I did not.

Int. 80. What, if any, conversation did you have with Mr. Armstrong touching the Clews dividends and stock at that time?

(Defendants make same objection.)

A. Nothing; it was merely incidental; I don't remember particularly.

Int. 81. Was that matter talked about at that time?

(Defendants make same objection.)

A. I think there was some conversation about it.

Int. 82. What led you to visit Mr. Armstrong on that occasion?

(Defendants make same objection.)

A. I don't think you have any right to inquire into the
75 business of Traer Bros., but I will answer your question. I was in New York in connection with the business of Traer Bros., with the exploded firm of Howes & Macy, of which J. Nelson Tappan was the trustee in bankruptcy. I called to see Mr. Armstrong relative to legal business in connection with that.

Int. 83. What conversation did you have with Armstrong at those interviews on that occasion touching one M. Howard, attorney, of Chicago?

(Defendants make same objection.)

A. I decline to state what conversation I had about legal matters. I had none other.

Int. 84. Did you not on that or some other visit to New York about that time, in behalf of yourself and Martin Howard, employ James Armstrong to make a purchase of this Clews stock for you?

(Defendants make same objection.)

A. I did not at any time employ James Armstrong to purchase stock for myself, Howard, or any one else.

Int. 85. Did you not have some conversation about the purchase of that stock, and the manner of making the purchase?

(Defendants make same objection.)

A. I think there was something said as to the disposition of the trustee to sell, and I asked him if he would act in case he had an order from the West; that I thought probably there would be some parties out there who would want to buy. No conversation of any more definite nature. I did not have reference to any parties in particular in the contemplated purchase of the stock. I thought perhaps some of other stockholders might desire to purchase.

Int. 87. Do you state that this is all the conversation had with Mr. Armstrong on the occasion of this visit to New York, or any visit, in 1876, with reference to the Clews stock?

(Defendants make same objection.)

A. As far as that vist of January, 1876, and as stated, it is substantially all. I had no other interviews with Mr. Armstong during the year 1876; was not in New York city again during the year.

Int. 88. Did you request Mr. Armstrong verbally or by letter
76 in the winter or spring of 1876 to purchase this Clews stock for Martin Howard or yourself?

(Defendants object, 1st, that so far as letters are concerned they are the best evidence, and the witness cannot be required to state their contents; 2d, the question calls for privileged communications between client and attorney.)

A. I did not. I may have received or written letters from or to James Armstrong in 1876, as a partner of Traer Bros., but do not remember. I preserved no copies, and I have no letters received from him.

Int. 90. If you received any letters from him what has become of them?

(Defendants object, 1st, that the witness has already certified that he received no letters from Armstrong during 1876, and plaintiff now seeks to cross-examine his own witness upon a hypothesis contrary to the testimony of the witness; 2d, the question relates to privileged communications between attorney and client.)

A. I can't undertake to say if any were received.

Int. 91. Did you receive personally any letters from James Armstrong, whatever, in 1876?

(Defendants make same objection as to last question.)

A. None that I remember of.

Int. 92. Do you know of any correspondence of a business character between your wife, Mrs. A. D. Traer, and Mr. Armstrong during that time?

(Defendants object, so far as the witness may have knowledge from his wife, that question calls for the communications between husband and wife which are privileged. Defendants' counsel advises witness not to answer this or any other question relating to communications between himself and wife.)

A. I know of none. I use the word "know" as meaning I have no personal knowledge. I don't regard hearsay as knowledge. Mr. Armstrong is not still retained by me as my attorney, unless it might be in a general way. Armstrong & Briggs are my attorneys in the suit of Henry Clews pending against me in New York.

77 Int. 94. Does the suit pending in New York relate to this same fifty shares of stock in the Construction Company, or anything out of it?

(Defendants object, that the question is incompetent, the records or certified copies being the best evidence of what the suit relates to. Defendants' counsel advises witness not to answer.)

A. I decline to answer.

I have never employed Mr. Howard as my attorney personally. He was employed by my brother, J. C. Traer, and myself as Traer Bros., a brokerage firm at Vinton, about March, 1876. I don't remember now who employed him; it may have been by my brother or myself, by letter. I had no interview with Mr. Howard in 1876 in Chicago that I remember of. I saw him in Cedar Rapids when he came out here on legal business for the firm of Traer Bros.

Int. 98. What was that legal business, and did it grow out of the fifty shares of Construction Company stock standing in the name of Clews?

(Defendants object; that the question calls for privileged communications between attorney and client.)

A. I decline to answer.

Int. 99. Do you know whether Mr. Howard had any other business than collecting certain dividends arising out of the Clews stock?

(Defendants make same objection as last above.)

A. He was practicing in the courts of Benton county and had some business there, but to what extent I don't know.

Int. 100. Do you know whether Mr. Howard at that time had any other business than that touching the Clews dividends and certain litigation in the courts of Benton county?

(Defendants make same objection.)

A. I have no personal knowledge of any other business, had no means of knowing whether he had any other, and had no interest in knowing.

Int. 101. At whose instance or request did M. Howard come to Cedar Rapids?

A. As answered before, he was employed by either my brother or myself by letter.

78 Int. 102. Do you state that when M. Howard came to Cedar Rapids in March, 1876, he came as the attorney of Traer Bros. and at their instance and request?

A. Yes, sir.

Int. 103. Was the payment of the Clews dividends made by you as trustee to M. Howard as the attorney of Traer Bros.?

A. No; the funds were paid to him as the attorney of James Armstrong, as evidenced by the vouchers.

Int. 104. Then Howard came to Cedar Rapids at that time on the business of Jas. Armstrong as well as the business of Traer Bros. and certain litigation in Benton county?

A. He was employed by Traer Bros. to act in the name of James Armstrong as well as in their own interest in Linn county in prosecuting the rights of the owner of the Clews stock as against the Construction Company. The Benton county business had nothing to do with it. He was employed very recently before his visit, a week or two, or less. The owner of the Clews stock at this time was Mrs. A. D. Traer. The rights I refer to are any and all rights transferred by the trustee in bankruptcy of the estate of Clews. I never saw any correspondence between Armstrong and Howard except what is filed in this case. I have no personal knowledge of any authority or employment of M. Howard outside of what I have already referred to.

I now present the voucher referred to in answer to int. 103, with secretary's certificate attached. (Copies of same are hereto attached as Exhibits C and D.)

Int. 110. The certificate of the secretary of the former company shows $10,500 due Henry Clews on account of the 50 shares of stock. Now what authority had you for making out an account to the credit of James Armstrong for $11,913.75 on the 19th day of March, 1876, and paying the same over to M. Howard for James Armstrong?

A. The authority as heretofore presented and the certificate duly and properly signed, and with the approval and advice of the attorney of the company. I don't remember particularly with whose approval and advice the $1,413.75 interest was paid. The attorney of the company was present at the time the voucher was made up, and some of the other stockholders, I don't remem-
79 ber just now who. I think there had been no demand made direct for these dividends until made by Mr. Howard. I don't remember distinctly as to whether there had been any indirect demand. As stated before, part of the stockholders were disposed to resist legally any claim on that account in favor of the Clews estate. I did not regard this as an indirect demand for the dividends. I referred the whole matter to the secretary and the attorney of the company, and acted, as stated before, on advice which I supposed I had a right to. Mr. A. S. Belt had been the legal adviser of the company as long as I had known it, was the legal adviser that drew the trust under which we were acting, and we always continued to consult him in all company matters. He is now dead.

Int. 115. This voucher is drawn in favor of James Armstrong; did James Armstrong have any interest or any part of these funds personally?

A. As regards the purchase of Armstrong, and New York parties generally, I would state: In July, 1875, I was in New York on business of Traer Bros. connected with Howes & Macy, and called at the office of the register in bankruptcy to ascertain if the Clews stock

was involved in his bankruptcy. An examination of the schedules showed no listing of it. I then called on Mr. Clews and asked him if he had disposed of it. He at first seemed in doubt, and then finally thought he had made an assignment to one of his creditors. After some conversation he requested me to let the matter rest and he would look it up and advise me. I think I saw him later in the fall again in passing through New York, about the time of his discharge in bankruptcy. He said he was having trouble in getting his discharge and had had no time to look the matter up, or something to that effect. About the close of the year, or the first of 1876, to the best of my recollection, I enclosed a letter to him written to his trustee and requested him to file it with the trustee. I was in New York in January, 1876, called upon J. Nelson Tappan, trustee of Howes & Macy, and also trustee of Henry Clews, and before leaving I told him of the interest in the stock of the Construction Company standing in the name of the estate, and I thought the trustees would shortly make their first dividend, and I had previously called at his regular office down town and left a line for him,
80 not expecting to see him, notifying him of the same thing.

He replied that it was a surprise to him, it was the first knowledge he had of the Clews estate having any interest of that kind and the first thing he had ever heard of that had any money in, and immediately said: "Don't you want to buy it?" I replied if I was not a trustee I might, but as it was I did not wish to buy but might be instrumental in sending him some one who would, but that I preferred that he would examine the matter in his own way. I have previously stated that something was said to Mr. Armstrong when in his office during that visit. On my return home I stated what had occurred, and the disposition of the parties to want to sell, to Mrs. Traer, who was a large stockholder, and recommended its purchase to her. She took the matter under advisement and finally went to Vinton, as I understand, and employed J. C. Traer, manager of Traer Bros., to make the purchase on her own account. I understood, as a partner of Traer Bros. afterwards, that the purchase was made by Mr. Armstrong through the brokerage firm there at Vinton. I had no other knowledge of the matter until after the purchase, some weeks afterwards, when my brother called my attention to it and it was finally agreed, to avoid litigation with the contentious stockholders here, to have it placed in the hands of an attorney non-resident to claim the rights, in order to avoid any litigation. I think the rest has been substantially stated. Mr. Howard was employed and presented it. Mr. Armstrong had no personal interest in it that I am aware of.

Int. 116. Did you state to Mr. Clews at either of these interviews with him that there was standing to his credit as dividends on the books of the N. W. Construction Company $10,500 or any other sum?

A. I did not have any conversation with him about dividends or his old account. I don't now know that I knew there was an account. I have before stated what I said to Mr. Tappan the only time I ever met him. I don't think there was anything said about any old accounts or old dividends, nor did I make any representa-

tions whatever to values. I don't think I informed Armstrong at any of these interviews of this credit of $10,500 on the books
81 of the company. I had but very little conversation with him about it. When I told Tappan of the interest of the estate of Henry Clews in the Construction Company I had reference to the stock standing in the name of Clews. I told him there were fifty shares of stock standing in his name and that it was in the process of winding up, in the hands of the trustees of whom I was one. I don't think I told him the amount of the shares. I don't think he asked me. Nothing whatever was said by me in conversation with Mr. Tappan as to the probable value or the amount that would be realized out of it. I had previously left a letter at his regular office stating substantially the same thing, and referring him to different bankers and attorneys here as proper parties to make an examination for him.

Int. 121. What statement, if any, did you make to one R. A. Southwick, a confidential clerk of J. Nelson Tappan, as to the value of said stock, and did you inform him of the $10,500 credit standing on the books of the Co.?

A. I made no statement of any kind to R. A. Southwick. My statement was in writing there in the office, addressed to the trustee, the only statement I made of any kind.

I found the certificate of the Clews stock in the old stock book, apparently uncalled for, and forwarded it through the mail to the trustee (Tappan). I found it about the time of sending it. A copy of the letter will be found in the copying-book, and it is dated about the middle of January, 1876, and a few days after the payment to Tappan of the first dividend by the trustees. I am certain that I sent this certificate to Mr. Tappan, and not to Mr. Armstrong.

Int. 124. Did you not make an estimate of the probable amount that would be received from said assets at the time you forwarded the dividend to Tappan?

(Defendants object; that the latter is the best evidence, and the witness cannot be required to state its contents.)

A. I don't remember as to that. I can't undertake to state the contents of the letter.

Int. 125. You furnished a statement of the assets of the company to Tappan; did you make any reference therein to this $10,500 dividends?

(Defendants object; 1st. The question assumes that the wit-
82 ness furnished Tappan a statement of the assets of the company; no such fact has been proven; 2d. Such statement, if made, is the best evidence of what it contains; the witness cannot be required to state its contents from memory.)

A. I have not said that I furnished Tappan with any such statement. I left a letter at his office, but it was not a statement, as I remember. I have no copy. In answer to an inquiry from James L. Bever as to what the assets consisted of, I furnished him with a correct list of the aggregate amounts, with my guess of probable

results. I herewith produce a copy of that statement. (Copy attached as Exhibit E.)

Howard did not leave the certificate of stock with me after he was paid the $11,913.75. I can't say what he did with it. I think he left it with Traer Bros., at Vinton, with J. C. Traer; possibly with Mrs. Traer.

Int. 127. On the trustees' record, page 46, the trustees certify May 8, 1876, that stock certificate No. 48, for fifty shares of stock, heretofore transferred to James Armstrong, "was filed with us for transfer this day." Will you produce such certificate? (Copy of the entry of record is hereto attached as Exhibit F.)

A. I cannot produce the certificate now. It was not our habit to retain them where presented for transfer, and we did not retain this certificate.

Int. 128. Will you, as one of the trustees of the Construction Company, produce the authority on which you paid Martin Howard $11,913.75, other than the letter of March 10, 1876 (Exhibit B), if you have any?

A. I herewith present the record and presentation and transfer of the Clews stock, with the assignment of right and dividends declared, on page 45 of trustees' record. (Copy annexed as Exhibit G.) The original certificate issued to Henry Clews, duly assigned together with all rights and dividends declared as presented (see record, page 45) is not in my possession.

Int. 130. If this original authority is in the hands of your wife, Mrs. Traer, will you produce the same to-morrow morning, that it may be copied and copy attached to your answer to this interrogatory?

(Defendants object to the question, because it does not in-
83 quire of the witness touching any fact, but simply seeks to make the witness the bailiff or agent of the plaintiff. Defendants' counsel instructs the witness that he need not answer this question.)

A. I decline to answer.

Int. 131. You state that you received a certificate that there was $10,500 standing on the books of the Construction Co., due to Henry Clews on the 19th of March, 1876. Did you, as a matter of fact, receive it on that day, and was it in answer to a demand made on the secretary on that day?

A. My best recollection is that we received it of that date and paid it of that date. I know we received it in the forenoon and paid it in the afternoon of the same day. The voucher bears date the 19th. I was not present when any demand was made on the secretary by Mr. Howard, and don't know what took place. I think this certificate was received from the secretary by Mr. Howard. We were standing at the table in the room together, and it was passed to me by one or the other. I can't say as to how much of an examination was made. On my entering the office Mr. Rowley, the secretary, Mr. Belt, the attorney for the company, and, I think maybe, Wm. Greene, were present. The secretary had his cash

book, ledger, etc., on the table. I think he wrote the certificate on the table there in the rear of the bank, because the blank on which it is written I recognize as one then in use by the bank.

Int. 134. How then do you account for the fact that this certificate is dated over a year before that time?

(Defendants object; that the witness can only be required to state the fact as to when the certificate was made or received by him; he cannot be required to surmise or account for the act of the secretary in dating it back. It is immaterial and incompetent.)

A. I don't undertake to account for it. I only know it was delivered at the date mentioned. This is not the only certificate of the kind that we received from the secretary showing the indebtedness of the company. There are others. The secretary failed to certify any of his accounts where balances were due to creditors, and we were compelled to require the parties to bring his order or certificate to the validity and justness of the account be-
84 fore paying it. We paid no open accounts, only as certified by him as former secretary of the company. In some cases the granting of these certificates by the secretary involved adjustments other than taking the balance from the books of the company by him. He was writing on his books and adjusting some accounts for something like a year after the trustees were appointed. As to whether he was authorized to adjust and settle claims appearing on the books of the company I refer to pages 36, 37, 38, and 41 of the secretary's record. (Copy of said record, so far as referred to, is hereto attached as Exhibit H.)

Int. 138. If Mr. Rowley was authorized to adjust and balance the books as between the stockholders and the trustees, why did the trustees pay $11,913.75 when he had only certified to $10,500?

A. I have stated before that all other stockholders had received their notes and been paid their interest, and the assignee of the Clews stock was paid in the same way.

Int. 139. In this voucher for $11,913.75 you have one dividend of $10,000 and one of $2,500, less $2,000. Explain that.

A. The voucher is a copy of the account on the secretary's ledger. I understand the $2,000 charge paid some assessment due on other construction stock.

Int. 141. Did you advise with any of the stockholders as to the propriety of paying that claim for interest; and, if so, with whom?

A. At this late day I cannot undertake to say, other than I have already answered, except that Dr. Ely's original signature is on the voucher and approval, he being one of the largest stockholders. The signature of Dr. Ely was made upon his return home, some weeks afterward.

Int. 142. Yourself and brother, J. C. Traer, constituting the firm of Traer Bros., are attorneys-at-law, and J. C. Traer has been in practice in Benton county for the last twenty years?

A. Yes, I believe that is true. I have stated in answer to interrogatory 115, as near as I could recollect, when I saw Mr. Clews in

New York. As regards conversations, at this late day I can't undertake to say beyond what I have already stated.

Int. 144. Did you not, on one of your visits to Henry Clews, try to induce him to sell you this stock, representing it to be of
85 but little value, but that you wanted to get control of it so as to wind up the trust, and offering Clews some $1,200 therefor.

A. I had no such conversation with him. I received no letter from Henry Clews in reference to any proposition. I received an acknowledgment from him of my enclosure of a letter addressed to his trustee and referring to his trustee. I have not preserved that letter, and cannot furnish a copy of it. I have a letter from Mr. Clews, addressed to me at Cedar Rapids, marked "personal," dated February 28, 1876, which is all the letter I received that I remember of, except the one referred to in this answer above.

Int. 146. You say you received a letter about the middle of November, 1875, but have lost the same. Will you state the contents of it, and if it was not substantially the same as a purported copy that I hold in my hand, dated New York, November 13, 1875, directed to J. W. Traer and signed Henry Clews? (Witness shown copy referred to, and same hereto attached as Exhibit I.)

A. I stated, in answer to Int. 145, that I received a letter of acknowledgment, but did not name any dates. I answered to the best of my recollection as to its character. I do not think the copy produced is a copy of that letter.

Int. 147. In Exhibit I reference is made to a certain proposition made by you to Henry Clews. State what that proposition was.

(Defendants object. The purported copy shows that the alleged proposition was in writing; that writing is the best evidence; the witness cannot he required to state the contents from memory.)

A. I made no proposition verbally to Mr. Clews whatever. Nothing I wrote him warranted such a term, and, if so, the letter will show for itself. I have no letters of Henry Clews that I can attach, and none from J. Nelson Tappan, save the receipt for the first dividend, which I here produce. (Copy of same is hereto attached as Exhibit K.) I have a letter received from Henry Clews purporting to be of date February 28, 1876, but I am in doubt as to whether it was received in 1876 or 1877, as there is an attempted correction of the date on the letter, and the postmark does not show the year.

86 Int. 150. Did you not state to Henry Clews or J. Nelson Tappan, on one of these visits to New York, that you knew of a man by the name of Armstrong who you thought would like to buy the stock, and that you would send him around?

A. I did not make any such statement to either one of them.

Int. 151. You state that you recommended the purchase of said stock to your wife, Mrs. Traer, on your return from New York city. Please state what representations you made to her as to the value of said stock, or whether you said anything to her in relation to the $10,000 or $12,000 of dividends standing to the credit of Henry Clews.

A. I decline to state conversations between myself and wife.

Int. 152. Do you say your wife employed the firm of Traer Bros., of which you are a member, to purchase said stock on her account?

A. I said I understood by hearsay that such was the case. I was not at Vinton nor present when it was done. I had no personal knowledge of the employment of Traer Bros. until after the stock was purchased. I can't state precisely when or by whom my attention was first called to the purchase of the stock. I think by my brother very shortly after its purchase.

Int. 155. Was the firm of Traer Bros. employed to make this purchase in behalf of Mrs. Traer as attorneys or brokers?

(Defendants object that it is immaterial, and that the witness has already twice stated that his knowledge of the employment of Traer Bros. was hearsay, and he cannot be required to state the terms of employment which it is already shown he knows nothing about personally.)

A. I only know by hearsay, and decline to undertake to state. I cannot tell what commission or fees the firm of Traer Bros. received for this service, having very little to do with Traer Bros.' business.

Int. 157. You state it was finally agreed, to avoid litigation with the contentious stockholders here, to have it placed in the hands of a non-resident attorney to claim the rights in order to avoid any litigation. By whom was this agreement arrived at? Who were the parties to it, and please explain how this course would avoid litigation?

87 A. The parties to the agreement were Mrs. Traer, her attorney, J. C. Traer, and myself. The attorney of the owner was disposed to press her rights, and he was disposed to think that there would be a greater resistance made to him than there would be to an outside attorney. The trustees were in no position to act, without the approval of the former secretary and accountant, and advice of the company's counsel. By resistance I refer more particularly to the refusal or failure of the secretary to acknowledge any balance legally due on that account, and to Judge Greene, who was one of the largest stockholders, and who insisted strenuously that the trustees should not undertake to recognize it in any way. I can't say precisely when this agreement was arrived at. It was very shortly after the purchase of the stock by Mrs. Traer. As to whether Mrs. Traer and myself were at Vinton, or J. C. Traer down here, I do not now remember. I cannot give the date of the purchase of the stock.

Int. 164. How much was paid M. Howard for his services in the premises by Mrs. Traer, through the firm of Traer Bros. or through yourself?

A. I make the same answer as to Int. 162; that is, that I can state only from understandings, which are not evidence; and as J. C. Traer, the manager of Traer Bros., is within reach, I would refer you to him.

No money was paid to Mr. Howard in Cedar Rapids. I went to Vinton to collect from collections made by Traer & Gilchrist, so as

to make out sufficient funds to pay the claim. I carried part of the money, as before stated, from here, raised sufficient currency from Traer Bros., and collections aforesaid, and paid the full amount to Mr. Howard, taking his voucher for the same, at the bank in Vinton. I may have been present when he received or withheld pay for his services. I don't remember now how he received his pay. There may or may not have been an agreement as to the remuneration he was to receive prior to his coming to Cedar Rapids; I can't say at this late day.

Int. 167. Did not Mr. Howard claim at Vinton, in your presence, that he was to receive $100 per day for his services, and was there not a controversy there at Vinton as to the time and the amount he should be paid? Did you not take part in that?

88 (Defendants object that it is immaterial, incompetent, and foreign to the issue joined; that the amounts paid by Mrs. Traer to her attorneys, or disputes between her and her attorneys, in no manner touch or affect transactions between her or the defendants and Tappan, which are alone in controversy.)

A. I decline to state conversations occurring between Traer Bros. and their attorneys about legal business.

This payment of about $12,000 to Howard was made in currency.

Int. 168. What disposition was made of said $12,000 by Howard then and there, and, if deposited, to whose credit was it deposited?

(Defendants object to the last part of the question; that the books or certificates of deposit are the best evidence.)

A. I saw him afterwards paying currency to J. C. Traer, and take it he received the money for the owner. I left very shortly afterward on the train for Cedar Rapids. I was not in the habit of doing any business behind the counter of Traer Bros. The amount of the voucher, eleven thousand dollars and something, was paid to Mr. Howard in currency, and he sat down at the table and counted it, and then receipted the voucher. I don't remember clearly how long it was before Mr. Howard came to Cedar Rapids that he was employed for that purpose. A week, perhaps, or less. In stating that it was agreed to place the business in question in the hands of a non-resident attorney, I refer to the employment of Mr. Howard. In Exhibit E, in stating the indebtedness of the company to be $15,000, I had reference to the undischarged personal claim for services rendered, of which I here furnish copy (copy attached hereto as Exhibit L), and other undischarged indebtedness generally, such as bills payable, the expenses of the suits then pending, and any other indebtedness. The figures given were only an approximate guess.

I was engaged from the spring of 1871 in securing the right of way for the B., C. R. & M. R'y north from Waterloo and the Pacific and Milwaukee Divisions, to enable the Construction Company to comply with their contract to furnish right of way and depot grounds, and construct said road ready for the rolling-stock. See terms of the

89 contract, page 8 to 13 of the secretary's record. (Copy of same is hereto attached as Exhibit M.) And from the spring

of 1871 to April, 1874, in making collections and securing from the railway company the donations, subscriptions, taxes, and other donated interests coming through the terms of that contract from the one company to the other; the amount of funds passing through my hands to the secretary up to April 1, 1874, aggregating, by the audited report to the secretary, recorded pages 26, 27, and 28, $210,884.13; which work, together with other care of interests of the company, divided my time as the necessities seemed to demand. I don't think there was any formal appointment, but I acted and was recognized by the officers and directors generally, as shown by the records of the company. At the same time I was the regularly appointed general agent of the B., C. R. & M. R'y Co., with duties of a general nature in the care of the company's interests so far as they came under my observation, with salary of $1,500 per year.

Int. 176. I notice that this claim for salary was dated April 1, 1874. Was this ever presented to the Construction Company, and what disposition was made of it?

A. I presented my demand to the board of directors at the time of filing my report, about April 1, 1874, and they refused to allow it; whereupon I asked that it be made a matter of record, and they refused that. Since that time I have made no effort legally to collect the same from the Construction Company, because of the fact that the principal resident large stockholders were all endorsers for and had lost heavily in the B., C. R. & M. R'y Co., were largely, if not wholly, insolvent, and a legal enforcement of this claim would be enforcing it against them personally, which I forebore to do.

Int. 178. The Construction Company, at the time of its dissolution, as well as before and afterwards, was always considered entirely solvent, was it not?

A. It paid its debts. I don't remember particularly whether there was or was not any mention made of this claim at the time of the dissolution and the appointment of the trustees. The secretary and myself made the list of assets called Book A, the secretary checking and approving the list. It was already as familiar to me
90 as anything of that character, of matters of scattered and doubtful character could be.

Int. 182. Did you about this time enter into negotiations with George Greene, William Greene, Dr. Ely, Mr. Rowley, or any other stockholders, with reference to purchasing their stock?

(Defendants object, that it is immaterial, incompetent, and foreign to the issues. Defendants' counsel instructs the witness that he need not answer the question.)

A. I decline to answer.

Int. 183. On page 45 of the secretary's and trustees' record there is an entry dated January 3, 1876, certifying in substance that Mrs. A. D. Traer had purchased fifty-five shares of construction stock issued to Wm. Greene. Who conducted the negotiations for the purchase of this stock from Wm. Greene?

(Defendants object, for same reason as last above.)

A. I know of no negotiations particularly. Mrs. Traer exchanged some stock in the Union Bank for Wm. Greene's stock. The business and papers in the matter were arranged by me.

Int. 184. State the purchase price paid Mr. Greene for said fifty-five shares.

(Defendants make same objection as to Int. 182.)

A. I can't state any purchase price. It was simply a lumping trade, both of the stocks being of doubtful character. My best recollection is that Mrs. Traer gave fifty-six shares of Union Bank stock, $100 each, for fifty-five shares of construction stock. The Union Bank stock was worth perhaps $25 or $30 per share in cash. At that time $247,500 of the bank's assets was in judgment against the B., C. R. &. M. R'y Co., and I regarded it almost entirely worthless. About $90,000 of their capital was in the Union Bank Building and a poor investment at $25,000 to $30,000. They had sustained losses in other directions, or were likely to, of anywhere from $20,000 to $50,000, and were doing but a very small amount of business. A prudent man I don't think would have bought the stock, with a knowledge of it, at any price, without he had an interest in it. I know of no cash or quotable value of the Construction Company stock per share January 3, 1876.

91 There were so many contingencies surrounding it that I don't think a party having a full understanding of them, without being already interested in it, and being forced in a certain sense to dig out of it as best they could, would have bought it, for the reason that of what so-called assets were in the hands of the trustees only the interest in real estate at Greene could be called an absolute title. All other assets were jeopardized and in litigation, partly growing out of the situation of the assets, and because the receiver of the B., C. R. & M. R'y, in July, 1875, served me, as general agent of the railway company, notice to hold or turn over all moneys, books, papers, or rights of any kind coming into my hands or held by me by virtue of my position as the general agent of the company. Very soon after, in November, the railway company commenced suit against the Cons. Co., making the company and all its officers parties to the suit, claiming the right not only to what was in our hands of the donations and aid that had been voted the road, but claiming an entire accounting and judgment for a very large amount that had been received previously from the same sources. Their first suit or bill was demurred out of court early in the spring, about March, when they immediately filed an original bill of substantially the same nature on the same parties, requiring the same character of accounting and claiming judgment in several hundred thousand dollars. This last case was contested in the courts actively until in November, 1877, when a general compromise and a withdrawal of litigation on both sides was the result of all the litigation between the two companies. I should have said all the judgments, aid notes, taxes voted, and donations stood in the name of the railway company. No assignment had been executed, or has

been since, by the proper officers of the railway company, the only waiver of rights being the compromise of the suits mentioned.

Int. 188. I notice by the trustees' record that Mrs. Traer presents assignments of stock of the Construction Company from E. M. Greene, five shares; W. H. Pettibone, five shares; N. B. Squires, fifteen shares; J. W. Barnes, five shares; T. W. Barhydt, five shares; S. L. Dows, certain shares; H. B. Stibbs, certain shares; Jas. J. Warren, twenty shares. Who conducted the negotiations and
92 made the trade for these shares at the different times they were made, and who made the papers?

(Defendants object, that it is immaterial, incompetent, and foreign to the issues.)

A. Most of the business relative to the purchase by Mrs. Traer of these shares mentioned was done by me as her agent.

Int. 189. What portion of the business of negotiating for the purchase of these shares was done by any other person?

(Defendants make same objection.)

A. I don't remember particularly now.

Int. 190. On page 47 of the trustees' record, Exhibit N hereto, there is a transfer of the equitable or legal interest represented by certain stock in the Construction Company to Mrs. Traer of April 4, 1876, by George Greene, of 135 shares for $7,560; July 11, 1876, D. W. C. Rowley, 30 shares for $1,500; December 28, 1876, John F. Ely, 70 shares for $3,080; January 2, 1877, S. L. Dows, 50 shares, $2,000; January 31, 1877, Geo. Greene again, 25 shares, $1,350; January 31, 1877, J. W. Traer, 30 shares, $1,500; all of which sales are made, excepting such recovery as may be had against the B., C. R. & M. R'y Co. What, in your best judgment, then, was the value of said stock at the dates of said transfers, with the exception noted?

(Defendants object, that it is immaterial, incompetent, and foreign to the issues.)

A. As part of my answer, I refer to my answer to Int. 187, and add thereto that in each of the above cases the figures were more or less nominal, and in each case the personal agreement and guarantee of the party, in form substantially alike, was executed to Mrs. Traer, guaranteeing the peaceable legal possession of the rights purchased, or, in the event of a failure, the refunding of the consideration, with 10 per cent. interest.

Int. 191. When you sold your thirty shares of stock to Mrs. Traer for $1,500, was that, in your best judgment, at that time a fair value of the same?

(Defendants object, that it is immaterial, incompetent, and foreign to the issues.)

93 A. I have answered substantially in my answer to previous interrogatories.

Int. 193. In int. 158 you speak of Judge Greene's and the secretary's opposition to recognizing the Clews claim; how do you know Judge Greene and the secretary opposed this?

A. I said the failure or refusal of the secretary to acknowledge, and Judge Greene insisted strenuously, etc., as see int. 158. I know as to Judge Greene from his conversation with me, and as to the secretary, by having repeatedly requested him to certify us a list of what was due upon open account on his ledger. I can't undertake to say at this late date when Judge Greene and I had any conversation about the Clews dividend. There may have been some a short time before and some after my suggestion to Mrs. Traer to purchase the Clews stock. I don't know that the secretary did, in so many words, refuse to certify this account, showing the $10,500 due the Clews estate. He neglected and didn't do it. I have not said he was opposed to issuing this certificate. His failure to do it is what led me to suppose he was unwilling, when the resolution of the board required him to promptly write up his books, &c. See page 41 of record book. The request mentioned in my answer to int. 193 was made during the year just following the dissolution, but the times I can't state. As to how many times this request was made during that year, and what reply Mr. Rowley made, I can't undertake to say now. Mr. Rowley was very unwell, and sometimes showed considerable annoyance at my wanting his Milwaukee division and other accounts brought up. I don't remember that he ever offered any excuse.

Int. 202. The credit to Henry Clews on the books of the company was the same when you were elected trustee and made an examination of the books as it now stands?

A. I have said somewhere that I examined the secretary's account books. It may or may not have been there; I can't say. We did not refer to the books for accounts under the secretary's control, but sent them to him for settlement. The secretary, I think, kept the books in the Union Bank vault, or in his office when writing on them, where any stockholder could have referred to them,
94 the trustees among the number, as near as I remember. I don't remember that the secretary was away any considerable length of time during the year, nor entirely incapacitated for business. The trustees closed their account about September 4, 1877. It would be very hard to say what was the approximate value of the property, real and personal, turned over by us to the stockholders at that time. The assignment by the trustees is general. I preserved no list of the assets turned over to the stockholders, and can't undertake to state the contents of the book of assets. The same circumstances in part were pending, as see answer to int. 187; that is, litigation, when the final closing up was made September 4, 1877, as was pending in 1876 and 1877 prior thereto. I can give a guess, but any value would be so affected by the disposition and situation of the parties that it would be but little criterion to go by. I should place it between one and five thousand dollars, dependent on litigation and after results. These possible values or amounts were to be derived from the tag end of the assets in Book A of assets. I think all taxes voted had been previously collected. I think Book A shows clearly the outstanding and uncollected assets, as well as those adjusted and paid at that time. I can't re-

member as to whether I was always present at all the meetings of the stockholders after the dissolution.

Int. 211. On pages 43, 44 of the secretary's and trustees' record there is a record of a stockholders' meeting held November 26, 1875, at which you were present, and at which it was resolved that if any member of the Construction Co. should purchase the interest of Henry Clews in said company it should be considered as made for and in the interest of said Construction Co.; to what interest is reference there made?

A. I suppose it had reference to the stock. I was not present at the time the resolution was passed, having left the meeting some time before. There was not, as a matter of fact, a discussion of the question involved in that resolution while I was present at that meeting, and in which I took part. (Copy of record of said meeting, pages 43 and 44, hereto attached as Exhibit O.) The meeting was called, as I remember, to advise as to the propriety of attempting to enforce any lien against the B., C. R. & M. R'y Co., and
95 the making of an agreement with Hubbard & Deacon, as attorneys. The other matter, relative to the Union Bank, was incidental by way of advice. I remember as to the last resolution, because I did not notice the resolution until some time afterwards. At this remote day I cannot say how long it was afterwards.

Int. 214. What was the object of these meetings of the stockholders after the dissolution, as far as the action of the trustees was concerned, especially the meetings on the 20th of February, 1875, and the 26th of November, 1875?

(Defendants object; that the record itself fully discloses the objects and purposes of the meetings, and is better evidence than any opinion of the witness.)

A. As to that of November 26, 1875, I have previously stated in my answer to the last int. As to the other, I think the record discloses fully.

In winding up the affairs of the company we were acting under the authority of the trust appointing us and such legal advice as we had from time to time. I think my wife was not a member of the Construction Co. on the 26th of November, 1875, or previous thereto.

Int. 217. In answer to a former int. you state that you suggested the purchase of the Clews stock to your wife on your return from New York city. What construction did you put upon the resolution of said stockholders, already referred to, passed November 26, 1875?

(Defendants object; that the question is immaterial and incompetent. 2d. That said resolution is not, and never was, of the slightest force or effect, being wholly beyond the power or authority of the stockholders. It merely shows the disposition of the stockholders who passed it to make trouble about the Clews interest. Any construction the witness placed upon it, if he knew of it, can in no manner affect the legal rights of the plaintiff in this case.)

A. I don't remember at this late date.

I can't say how long after the payment of the Clews dividend to Howard the signature of Dr. Ely was attached to the voucher Exhibit C. It was some weeks afterwards. I have answered the question before.

96 Int. 219. Did you inform Dr. Ely, to whom the dividends were paid?

(Defendants object, as immaterial.)

A. I can't remember now what occurred.

Int. 220. Explain why the voucher Exhibit C was not signed by Traer Bros. as the attorneys of your wife, instead of Armstrong as principal and Howard as attorney.

(Defendants object; that the question is immaterial, and has already been fully answered in the answer to int. 115.)

A. For answer I refer to answer to int. 115.

Int. 221. Why were not the instructions to Howard to proceed to Cedar Rapids and collect the Clews dividends sent to Howard direct instead of through Armstrong by way of New York?

(Defendants object; same as last above.)

A. Not knowing, I can't say.

Int. 222. Please explain how it became necessary for your wife to employ the firm of Traer Bros., and for them to employ James Armstrong, and for him to employ Martin Howard to proceed to Cedar Rapids and there collect these dividends, instead of your wife's demanding and receiving them from yourself?

(Defendants make same objection.)

A. I respectfully refer counsel to Mrs. Traer, who is of age, and, I believe, under the laws of Iowa, has an entire right to act for herself.

Int. 223. Explain why it was that you recommended the purchase of the Clews stock to your wife when, as you have testified, it was so undesirable and of uncertain value.

A. Because she was already a large stockholder, and I had considerable interest myself at that time, and didn't see any other way of winding it up.

Cross-examination:

From the secretary's record the stockholders in the Construction Co. on February 20th, 1875, were George Greene, 135 shares; H. Clews, 50; Wm. Greene, 55; Jno. F. Ely, 60; S. L Dows, 50;

97 D. W. C. Rowley, 30; J. J. Warren, 20; J. W. Traer, 30; J. L. Bever, 25; N. B. Squires, 15; E. M. Greene, 5; Geo. H. Ely, 10; J. W. Barnes, 5; W. H. Pettibone, 5; T. W. Barhydt, 5. The stockholders were the same on February 10th, 1875, so far as my knowledge goes. This list of stockholders was certified by the secretary to the trustees as correct after the trust was accepted. He served a certified list on us. The trustee referred to in the resolution adopted and recorded on page 31 of the secretary's record is

myself. (Copy attached as Exhibit No. 1.) I was trustee for the Construction Co., and the other parties in interest there in the purchase of the real estate and the platting of the town. For the record of the original meeting, for the dissolution of the company I refer to page 30, secretary's record, November 21st, 1874. (Copy attached. as Exhibit No. 2.) The next meeting that was held with a view to closing up the affairs of the company was on February 13th, 1875, page 36 of said record. (Copy of same attached as Exhibit No. 3.) I understand that the resolution on page 41, already annexed as an exhibit, requiring the secretary to promptly write up his books, is a part of the proceedings of the meeting of February 15th, 1875, and was adopted at the time. I was present at the time. I don't know why the proceedings of that meeting held February 15th, 1875, are dated at the end of February 20th, 1875, and signed by Wm. Greene and others, unless it was an oversight of the secretary and growing out of the signatures not all being made at once perhaps. I have looked at the signatures of Wm. Greene and others attached to the acceptance of the resolutions of that meeting, and recognize all of them as genuine, except that of Geo. H. Ely. For the meeting at which Wm. Greene's successor as trustee, Dr. Ely, was elected, and the acceptance of the trust by Dr. Ely, see page 42 of secretary's record, March 25, 1875. (Copy of same annexed as Exhibit No. 4.) I recognize the signature of Jno. F. Ely as genuine. The trustees immediately entered upon the discharge of their duties. The official record of the doings of the trustees, aside from the books of account and book of assets, was kept on pages 45 to 57, inclusive, of the secretary's record book.

Int. 13. Point out all entries on said record wherein transfers of stock or equities in the assets or property of the Construction
98 Co. were recognized by the trustees, except so far as the same have already been annexed to your deposition, and state if such entries show the facts as to said transfers as they purport to do.

A. I point out transfers, April 20, 1876 (Exhibit No. 5); November 14th, 1876 (Exhibit No. 6); February 14th, 1877 (Exhibit No. 7); March —, 1877 (Exhibit*ed* No. 8); March 13, 1877 (Exhibits Nos. 9 and 10); January 2, 1877 (Exhibit No. 11); January 23, 1877 (Exhibit No. 12); December 28, 1876 (Exhibit No. 13); March 26, 1877 (Exhibit No. 14). The entries show the facts as they purport to do.

Int. 14. Look at the assignment of equities and interest in the property, etc,, of the Construction Co. on page 47 of the record, a copy of which has already been attached to your deposition as Exhibit N, and state whether the signatures attached thereto are, to your knowledge, genuine signatures of Geo. Greene, D. W. C. Rowley, Jno. F. Ely, E. M. Greene, and J. W. Traer.

A. I recognize the signatures as original and genuine.

I saw E. M. Greene write his signature to Exhibit No. 6.

Int. 16. Witness is shown the following certificates of stock of the C. R. N. W. Construction Co., all dated May 1, 1871, and signed by D. W. C. Rowley, secretary, and Jno. F. Ely, president, viz: Certificate No. 3, for 20 shares to Wm. Greene; certificate No. 5, for 10

shares to Wm. Greene; No. 6, for 10 shares to Wm. Greene; No. 7, for 5 shares to Wm. Greene, No. 34, for 10 shares to Wm. Greene; No. 18, for 15 shares to N. B. Squires; No. 23, for five shares to T. W. Barhydt; No. 25, for 10 shares to John W. Traer; No. 26, for 5 [shares] to John W. Traer; No. 27, for 5 shares to J. W. Traer; No. 31, for 5 shares to W. H. Pettibone; No. 32, for 20 shares to James J. Warren; No. 36, for 50 shares to Union Savings Bank; No. 37, for 10 shares to W. W. Walker; also written assignment of J. W. Barnes for 5 shares of stock to A. D. Traer. All of said shares of stock, except No. 36, 50 shares to Union Savings Bank, are duly assigned in blank by the persons to whom the same are issued, or to Mrs. A. D. Traer. No. 36 aforesaid is assigned by Union Savings Bank, by H. B. Stibbs, cashier, January 2, 1877, to S. L. Dows, and by S. L. Dows, January 23, 1877, to H. B. Stibbs.

99 Witness is asked if he knows the various signatures to the assignments of said stock to be genuine.

A. I do.

(It is here agreed by and between the parties to this suit that the certificetes and the assignment by J. W. Barnes, above referred to, need not be copied into the record or attached as exhibits, but be treated as of the same force and effect in evidence as though so copied or attached.)

A. Mrs. A. D. Traer owns and did own these certificates of stock assigned in blank on the 4th day of September, 1877.

Int. 18. Certificate No. 36, above referred to, bears certain endorsements and assignments upon the back. Look at the assignment now shown you, and state if you know the signature of S. L. Dows thereto to be genuine.

A. I recognize the signature as being genuine on both certificate and assignment. (Copies of same annexed as Exhibits Nos. 15, 16, 17, and 18.) The report on page 51 of the trustees' record was in fact made by the trustees, as there appears, and said report was correct. The signatures are original; the signatures on the opposite page, stockholders' meeting, are original and genuine. (Copies annexed as Exhibits Nos. 19 and 20.) The original of the instrument, which is copied on page 53 of said record, was retained by me. I have made diligent search for it, but have failed to find it. I have searched my desks and all other places where I usually keep papers, and every other place I could think of where it might be. I made the copy and had it proved as a true copy by J. S. Dey, whose genuine signature appears on the margin. The original was signed by Alla D. Traer, and was executed on the date attached to the copy and as copied. I know the copy to be correct. (Copy of said record hereto annexed as Exhibit No. 21.)

The instrument now shown me was executed on the day it bears date. It was delivered to Mrs. A. D. Traer or N. M. Hubbard, her attorney. The signatures thereto are original and genuine. It was recorded in the trustees' record, on page 54, and duly attested by J. S. Dey. (Copy of said instrument hereto annexed as Exhibit No. 22.)

The signatures to the instrument now shown me are genu-
100 ine, and were made when the same was delivered to me. It was delivered to me on or about December 11th, 1877, and thinking I might wish to record it, I handed it to the notary for acknowledgment. It was returned to me some time after the date of the acknowledgment. It is recorded in the trustees' record, page 57, and is the final entry in that record. (Copy of said instrument hereto annexed as Exhibit No. 23.)

Int. 23. In direct examination you mentioned a guarantee given by members of the Construction Co. who assigned their equities in the property of the company to Mrs. Traer. Look at the instrument now shown you, and state whether that is one of the guaranties referred to by you, who executed it, and whether other stockholders who assigned their rights to property of the company to Mrs. Traer, as already shown, executed similar guaranties to her.

A. It is, and was executed by D. W. C. Rowley, as were similar instruments by J. F. Ely, S. L. Dows, and Geo. Greene. (Copy of guarantee, signed by D. W. C. Rowley, above referred to, is hereto attached as Exhibit No. 24. Counsel for plaintiff inspects the other guaranties referred to, and agrees that they need not be attached.)

Int. 24. You testified that you paid certain notes of the company given for dividends declared, but which there was no money to pay. Produce said notes and vouchers relating to the same, and state the amount paid by you on each, and whether you know all of said notes to have been given for dividends, as stated?

A. I produce note to T. W. Barhydt, with voucher for the same hereto annexed as Exhibit No. 25; also note to A. H. Spangler for $140, dated August 20, 1874, due 3 months; note to Jas. L. Bever for $600, dated August 20, 1874, due 3 months, and voucher for said notes dated April 5, 1875; amount paid, $786.25; also note to J. W. Barnes, $200, dated December 20, 1873, due 7 months; note to J. J. Warren for $800, dated June 20, 1874, due 4 months, and voucher for said two notes for $1,161.95, dated December 28, 1875; also note to N. B. Squires for $800, dated June 20, 1874, due 4 months; and note to J. W. Barnes for $200, dated December 20, '73, due 6 months; and note to N. B. Squires for $200, dated June 20, '74, due 4
101 months, with voucher for said three notes, dated April 3, 1875, amount, $1,300.30; also note of $2,560, dated June 20, 1874, due 4 months, to Jno. F. Ely; also note to J. W. Barnes, $200, dated December 20, 1873, due 8 months; and note of $800 to James J. Warren, dated August 20, 1874, due 3 months; and note of $700 to S. L. Dows, dated August 20, 1874, due 3 months, and voucher for said four notes, dated April 15, 1875, amount paid, $3,578.06; all of said notes and vouchers being similar to Exhibit No. 25, and all of said notes drawing interest at 10 per cent. The notes above mentioned are all the notes given for dividends that I know of. I know the notes were given for dividends, because the parties were all stockholders, and from their statements, and from some knowledge of a general character coming from my connection with the company. (Note to T. W. Barhydt and voucher are hereto annexed as Exhibit No. 25. The other notes and vouchers are produced and inspected

by counsel on both sides. It is agreed that the above statement of them is correct, and that copies need not be annexed as exhibits.)

There were other notes of the company unpaid when the trustees were appointed and afterwards paid by us.

Prior to the appointment of the trustees, and while they were winding up the affairs of the company, the books of the company were kept in the company's office, where the secretary did his work, except at night, when they were deposited in the vault. There was every opportunity for stockholders to examine them in the usual way of business, so far as I know. I had nothing to do with the books of account of the company written up at the time of my appointment as trustee, either before or after my appointment. The trustees relied upon the secretary to certify open accounts, and did not attempt to use his books. I made no critical examination of any of the accounts; what I knew of them was simply casual.

Int. 29. State by what reason the cash in the hands of the trustees accumulated after July, 1875, up to December, 1875, as shown by your direct examination.

A. As stated before, shortly after his appointment the receiver of the B., C. R. & M. R'y served a notice upon me to turn over all moneys, books, and papers in my hands as general agent
102 of the railway company. A large portion of the so-called assets was in the name of the railway company without any proper assignment; taxes collected had to be receipted for by me as assistant treasurer, as did judgments, and so on, which raised the question who had the legal right. In November, 1875, the cross-bill or suit was commenced in the U. S. circuit court, and notice served on all of us. We thought it prudent to wait and go slow. The amounts paid out from July, and inclusive of our first dividend, were about the receipts from the undisputed assets at Greene. This accumulation of cash in the hands of the trustees did not have any relation whatever to the rights of the Clews estate or holder of the Clews stock.

Int. 31. Did you know at that time, or prior to the purchase of the Clews stock by Mrs. Traer, whether Clews or his representatives had paid the assessments made upon this stock?

(Plaintiff objects, as irrelevant, immaterial, and not cross-examination.)

A. I did not. I had nothing to do with the assessments or accounts.

Int. 32. State the amount which the stock of the Construction Company was assessed altogether, and the method of paying the assessments.

(Same objection, same ruling, and plaintiff excepts.)

A. I can't say precisely, but I think it was rising of seventy per cent.

The secretary and treasurer ordinarily drew on the parties, at least they did so on me, for the monthly installments, the last of which, for some months, were five per cent. per month.

Int. 33. You said in direct examination that at your interview with Armstrong in New York in January, 1876, there was something said as to the disposition to sell the Clews stock. Was this after you had seen Tappan and Tappan solicited you to buy the stock as you testified?

A. It was after the conversation related with Tappan, in which he desired to sell the stock to me. I did write to Clews on the 8th of November, 1875, and retain a pressed copy. It was sent to
103 Henry Clews as copied, regularly, in the mail. (Pressed copy is produced, agreed to be in handwriting of witness, and copy annexed as Exhibit 26.)

The persons referred to in this letter as Judge and William are Judge George Greene and William Greene, of Cedar Rapids, Iowa.

Int. 36. You speak in this letter of Prentiss matter, and that his assignment should be filed. State what this refers to.

A. In the conversation in July, 1875, with Henry Clews, related in direct examination, Int. 115, Mr. Clews stated that the equities of the stock in the C. R. & N. W. Cons. Co. he thought belonged to Prentiss Bros. He asked me what I thought the probable value of the assets in the hands of the trustees to be apportioned to that stock would be ultimately. I gave him my best guess as being from fifteen to twenty-five hundred dollars. He said possibly a purchase of the stock could be made so as to make something on it. He said he would like me to help him. He asked me if I was an attorney and could draw an assignment for him. I told him I was and could. I sat down and drew one hurriedly, as requested. He executed it, retaining it. Finally, it did not seem to suit him, and he tore his signature off of it and asked me to draw one which was a little different. I don't remember in what particular. There was some other conversation, and he requested me to let the matter rest and I would hear from him. The assignment ran to Prentiss Bros., as I remember. The reference in the letter to Prentiss Bros. refers to the matter above stated. At that time I had no personal acquaintance with Prentiss Bros, or either of them, nor have I now. I do not know anything about their relations to Clews. Mr. Clews suggested their name.

Int. 38. State if the proposed transfer to Prentiss Bros. was the transfer to a creditor mentioned in your answer to Int. 115, and who, if anybody, Clews proposed or suggested should buy the stock.

A. It was. I don't remember as to who was proposed by Clews. He said he was poor, and would like to make something out of it if he could, or to that effect. Mr. Clews in this conversation made no reference to or inquiries concerning dividends which had
104 been declared upon the stock of the company that I remember of.

Int. 41. At the time you gave Mr. Clews this estimate as to the amount of assets which might come to this stock from the trustees, had the receiver of the railway served on you the notice mentioned in your direct examination, or had the litigation there mentioned then commenced?

A. The notice was served afterwards, as well as the commencement of the litigation.

After this interview in July, 1875, I think the next time I was in New York was about January 1st, 1876. I think I was in New York the last of November, 1875. I saw Mr. Clews then; not certain whether I saw him in January or not. I have nothing from which I can fix dates. I have testified that I called on J. Nelson Tappan in January, 1876, and that Tappan then told me he knew nothing about this stock. I did not at that time know where the stock certificate was. I think the secretary handed it to me. I mailed it to J. Nelson Tappan, trustee, as per copy of letter on page 157 of letter-book. (Copy of letter produced agreed to be in handwriting of witness, dated Feb. 24, 1876. Copy of same hereto attached as Exhibit 27.)

Int. 49. In this letter you say: "As solicited, I have been trying to elicit a proposition for the stock from parties I thought might invest." What does this refer to?

A. It refers to conversation related with Tappan in January, 1876, in which I said possibly I could send him a purchaser.

Int. 50. You have stated that you told Tappan that you preferred that he would examine the matter in his own way, and also that you referred him to certain brokers and attorneys to make examination for him. State, as far as you remember, what bankers and attorneys you referred him to.

A. I gave the names of Mills & Blake, Jas. J. Bever, cashier City National Bank of Cedar Rapids, H. B. Stibbs, cashier of Union Bank, that I remember of, and I think others.

Int. 51. State how you came to furnish Mr. Bever with the statement you have annexed as Exhibit E.

A. Mr. Bever called on me and stated that he had an inquiry
105 from J. Nelson Tappan as to the value of the stock of the Construction Co. belonging to the Clews estate, and wished some estimate of the value of the assets placed in the hands of the trustees February, 1875. I drew off the books statement, see Exhibit E, and gave it to him.

Int. 52. You have stated that the estimate of indebtedness in this statement included your claim for services already produced. State if you then regarded, and now regard, that claim as valid and just.

A. I did so regard it, and do now, emphatically.

Int. 53. At the end of this statement you say: "The shrinkage and expenses will increase with delay, to say nothing of taxes and litigation." What has been the fact as to such shrinkage and expenses since this statement was made?

A. I think it has hardly been borne out. We were then in the worst period of the depression of 1876, and we did better in some respects than was hoped at that time. The conditional subscriptions in Blackhawk, Butler, Floyd, and Fayette counties, mentioned in this statement, turned out substantially as estimated—a very small amount from the first three named; in the latter the supreme court finally decided against us, and we realized only about $2,000 out of the list.

Int. 55 In Benton county you estimate in this statement the collection of 70 per cent.; in Tama and Buchanan, 60 per cent. How did these matters turn out?

A. In Benton and Tama counties the cash collections did not reach the amount of the estimate; in Buchanan county they overran some four or five hundred dollars, owing to a later report of the secretary in the summer of 1876 of collections made by him at Independence to the amount of some $400. This estimate embraced all the assets of the company known to me at that time borne on Book A of assets, and the estimate was made as my best judgment, and was my best judgment. The statement embraced the taxes not listed in the book for reasons heretofore stated. Mrs. Traer owned the bank shares that she traded for the stock of William Greene in this Construction Co. in her own right, as shown by the books of the bank. At the time of the purchase of the Clews stock by Mrs. Traer she had a separate estate, and had had since the death of her father in 1853,
106 prior to our marriage. She was an orphan and an only child. She received a legacy upon the death of her grandmother and uncle about 1870. I did not have, and have not since had, any interest in the purchase of the Clews stock or accrued dividend.

The document now shown me is a certified copy of one of the bills against the Construction Co. and others, referred to in my testimony. Their supplemental bill had been demurred out of court before the date of the filing of this one. (Certified copy referred to is attached hereto as Exhibit 28.)

Int. 61. Your testimony and exhibits show that Mrs. Traer purchased of Geo. Greene, D. W. C. Rowley, John F. Ely, and others their rights to the property and assets of the Construction Co., but not their stock. State why this was done.

A. The situation of the company's affairs, by reason of litigation. I regarded so dangerous that I advised Mrs. Traer not to take the liabilities of the stockholders, as I thought the representatives of the B., C. R. & M. R'y Co. might enjoin the trustees from disposing of the so-called assets in any way. I then understood that in case of a judgment against the Construction Co. which there were not sufficient assets to pay, the stockholders of that company would be liable to the extent of any balance not paid in on their stock. In view of this, and of the litigation then pending, an assignment by stockholders of all their interest in the property and assets of the company was, in my judgment, more valuable than an assignment of their stock, because of the freedom from liability in the company's old affairs. The resolution passed in my absence, providing that if any stockholder should purchase the Clews interest it should be considered as purchased in the interest of the Construction Co., had come to my knowledge prior to the purchase of the Clews stock by Mrs. Traer, and was one of the matters that led me to suppose there would be opposition to the payment of the dividends due on such stock, if Mrs. Traer was known to the resident stockholders to be the holder of such stock. I noticed this resolution on the records shortly after its passage.

Redirect examination:

When that resolution first came to my knowledge I under-
107 stood the term "interest of Henry Clews" referred to the stock in the company belonging to his estate.

Int. 2. State whether that is all you understood reference was made to in the resolution.

A. That is my best recollection now.

Int. 3. Then what objection could the resident stockholders have had to your or your wife's purchasing said interest?

A. I can't undertake to explain their reasons or thoughts.

In speaking of litigation pending at the time of the purchase of the Clews stock reference is made to the cross-bill of the B., C. R. & M. R'y Co., commenced about November, 1875, and all other litigation in which the company was involved.

Int. 5. This assignment of Geo. Greene, John F. Ely, D. W. C. Rowley, and others, what was excepted out of the assets of the Construction Co., and how large a claim or claims were involved in that exception, and in what manner were those claims under that exception settled and disposed of?

A. The assignment shows what. The claim that was attempted to be enforced against the B., C. R. & M. R'y Co. by lien was some $90,000. The claim was disposed of about November, 1877, by the withdrawal of all litigated cases on the part of both companies. The Construction Co. had no other claim against the B., C. R. & M. R'y Co. besides the $90,000 claim, that I am aware of.

Int. 7. In answer to a former interrogatory, you speak of an open account of Henry Clews on the secretary's ledger having been discovered by you some months after the trustees were appointed, showing certain dividends to his credit. What other, if any, dividends did you discover a credit of to any other stockholder on said book?

(Defendants object, that it is immaterial, incompetent, and foreign to the issues.)

A. I spoke of an account, but did not use the other language quoted. The ledger account did not show what it was. I discovered no other.

Int. 9. What was the consideration paid for the assignment shown in Exhibit 6?

108 (Defendants object, that it is immaterial, incompetent, and foreign to the issues.)

A. I think $45.00 per share.

Int. 10. In what way was this $45.00 per share paid?

(Defendants make same objection.)

A. In cash, I think.

Int. 11. What was the consideration paid for the assignment shown in Exhibit 7?

(Defendants make same objection.)

A. About the same, as I remember, and in the same way.

Int. 12. What was the consideration paid for the assignment shown in Exhibit 8?

(Defendants make same objection.)

A. I don't now remember; something about the same. I think it was paid in the same way.

Int. 13. What was the consideration paid for the assignment shown in Exhibit 9?

(Defendants make same objection.)

A. As I remember, about the same, and in the same way.

Int. 14. What was the consideration paid for the assignment shown in Exhibit 10?

(Same objection.)

A. About the same, and in the same way.

Int. 16. What was the consideration paid for the assignment shown in Exhibit 14?

(Same objection.)

A. About the same as No. 6, and in the same way.

Int. 17. On page 47, George Greene assigns to Mrs. A. D. Traer the equities and rights growing out of 135 shares of Construction Co. stock, made April 4, 1876; see Exhibit N. What was the consideration for this assignment, and in what was it paid?

(Same objection.)

A. I can't now undertake to say. It was a lumping trade.

109 Int. 18. The consideration mentioned in the record is $7,560.00. Was that the actual amount?

(Same objection.)

A. As near as I know, those figures were nominal.

Int. 19. On same page, July 11, 1876, I notice the assignment of the same rights and equities by D. W. C. Rowley in 30 shares of stock. What was the amount paid for these, and in what manner was it paid?

(Same objection.)

A. The figures were nominal, so far as I know. It was an exchange of some slow notes Mrs. Traer had, and perhaps a small amount of money.

Int. 20. State how much in money and how much in notes, and whether the notes were good and collectible, and whom they were against, and, if secured, what security.

(Same objection.)

A. About $300 in money and about $1,000 in notes, as near as I remember. I think the note was regarded as good, but slow. It was against M. D. L. Webb, and secured by mortgage.

Int. 21. I notice on December 28, 1876, same page, John F. Ely assigns all the right and equities to 70 shares. What was the consideration, and how paid?

(Same objection.)

A. I can't now remember. They were of a mixed character; about $300 in cash, some town lots, and some notes. The nominal figures were $50 per share; value, $30 to $50 per share.

Int. 22. I notice on same page, date January 2, 1877, assignment of all the rights and equities in 50 shares of S. L. Dows. What was the consideration, and how paid?

(Same objection.)

A. I can't now remember. It was a trade on about the same basis as that with Dr. Ely, in answer to last interrogatory, and about same value per share.

Int. 23. On same page, date January 31, 1877, assignment of all the rights and equities in 25 shares from George Greene and 30 shares from J. W. Traer to Mrs. Traer. What was the
110 consideration, and how paid?

(Defendants make some objection; and further, that communications between husband and wife are privileged.)

A. I refer to answer to Redirect Ints. 17 and 18 as to George Greene. As to the other, I decline to answer.

Int. 24. State where you found Clews in your interview with him when you talked about Prentiss Bros.

A. At his office, somewhere near Wall street.

Int. 25. State, as near as you can, what that assignment was, and the form used.

(Defendants object; that the instrument itself is the best evidence; there is no showing that it is lost or destroyed. Def'ts' counsel instructs witness he need not answer.)

A. I don't think I can recall it.

In that interview with Clews I have no recollection whatever of saying anything about the Greenes urging a division of the money in our hands. There was little, if any, money in the trustees' hands then.

Int. 27. You have stated you were general agent of the Construction Co. prior to its dissolution. What was your salary, and how long had you received it?

A. $75 per month, beginning April 1st, 1875, as collection agent, up to February, 1875, the same as collection agent, and $50 per month as trustee, after that time; prior to April 1st, 1874, no salary. That was all the compensation they ever gave me for services. I don't remember just when I first made my claim for about $10,000 percentage. I made the formal demand of the board of directors when I made settlement with them, as one of the board. I don't remember specifically as to the reply of the directors to this demand. I had conversation with several of the directors with reference to it, but can't now undertake to say when, where, and with whom. The secretary, in making up voucher for salary, inserted a provision making it a receipt in full for all claims for compensation, which I refused to execute. It was not understood on my part at the time

the resolution on page 30 of secretary's record was passed that this allowance was to be in lieu of that claim of $10,000. I
111 so refused to receive it, and here tender secretary's record, page 30, dates Nov. 21, 1874, and Dec. 21, 1874.

(Copy of said record attached as Exhibit P, showing erasure in record of Nov. 21, 1874, in evidence as Exhibit 2, and action of stockholders Dec. 21, 1874.)

Int. 32. I notice by Exhibit 19 an entry: "Claim of J. W. Traer for services rejected by board of directors, $10,534.19." When was that rejected by the board?

A. At their meeting about the time of their passing upon my report as collection agent, June 30, 1874.

Mrs. Traer subscribed for the 56 shares of Union Bank stock, which she exchanged for William Greene's 55 shares of Construction Co. stock, some time in 1872 or 1873, to the best of my recollection.

Int. 34. Did she purchase it all at one time, and, if so, what did she pay for it?

(Defendants object to this and the preceding question and answer as immaterial, incompetent, and foreign to the issues.)

A. As far as I know she paid money for it at par.

Int. 35. Who made the trade for it and purchased it and conducted the business?

(Defendants make same objection.)

A. I don't remember whether she did or whether I did some of the business for her.

Int. 36. State from what source the money was derived that went to pay for it.

(Defendants make same objection.)

A. I decline to answer, for the reason that the question requires me to disclose confidences between husband and wife, and for the further reason that it has no bearing on the case.

Int. 37. If said Union Bank stock was purchased with property other than money, state what it was and who owned it.

(Defendants make same objection.)

A. I decline answering, for the same reasons given in last answer.

Int. 38. In your cross-examination you refer to bills payable for dividends wherein you allowed and paid 10 per cent. in-
112 terest. Give the reason for reckoning 6 instead 10 per cent. on the Clews dividends, as shown by Exhibit C.

(Defendants object, that it is immaterial what the reasons of the witness were, as he has paid the exact amount of interest allowed by law.

A. I don't remember particularly now. Notes of the company were drawing 10 per cent. on their face. An open account would draw 6 per cent. by law. I was of the impression that 10 per cent. was allowed, until just now in looking at the voucher.

Int. 89. Who furnished you with the data for computing this interest, other than the certificate of the secretary appended?

A. I think the secretary's book was lying open on the table, and the voucher is, as to dates, a copy of it. This voucher was drawn and the interest computed by me, or the secretary handed me a memorandum, I don't remember which. I can't recall whether I computed the interest or Mr. Rowley did at that time. I think the interest was computed by myself, to the best of my remembrance. I don't remember whether I informed Mr. Rowley of the exact amount of the interest or not. I think he stood by the table. He may have known or may not. I believe the records of the trustees, from page 45 to page 57, inclusive, where the same purport to be originals, are all in my handwriting, except signatures.

Recross-examination:

The open account of Henry Clews, which I have said I noticed, is on page 178 of the secretary's ledger. A copy of it as it now stands is annexed as Exhibit 29. When I noticed it the balance had not been carried down, and it was not ruled up. The red figures and words or red rulings were not on the page. The words "balance" and "by balance" were not there. (Copy of same as it now appears annexed as Exhibit 29.)

Redirect:

Int. State by what circumstances you determine that those words and those rulings were not there when you first noticed the account.

A. I think I stated on direct examination that I asked the
113 secretary about that account. I had no other reason.

Deposition of J. W. Traer, in behalf of Defendants.

I am one of the defendants herein, and the same J. W. Traer who has been examined heretofore as a witness in this case on behalf of the plaintiff. At the time I was appointed trustee, the books and papers of the Construction Co. were kept by the secretary in the vault used by the B. C. R. & M. R'y Co. in the second story of the Union Bank Block. They remained there until Geo. Winslow was appointed receiver of the B., C. R. & M. R'y, about July 5th, 1875. I did not have charge of the vault where they were so kept, nor have the combination of the lock thereof. I did not, at or about the time Gen. Winslow was appointed receiver, remove the books and papers of the Construction Co. to the vault of the Union Bank, nor superintend their removal. I knew of the secretary, Mr. Rowley, moving them there, and his being engaged on them writing, then and for a long time afterwards. The books and papers of the Construction Co. remained in the vaults of the Union Bank, except when used by the secretary, Mr. Rowley, so far as I have any knowledge, until the final settlement of the lien cases in November, 1877, when the trustees took them in charge and removed them.

Int. 6. Mr. Rowley testifies, Cross-Int. 56: "I feel very well satisfied that the books had been removed from the bank building some

considerable time prior to the termination of said suit at Des Moines, and that if I consulted them at the Union Bank they must have been brought there for that purpose, and yet the time when the books were taken from the bank building, I have not any absolute knowledge of." State whether or not this suggestion of Mr. Rowley's as to the removal of the books from the bank building and their return for examination by him or otherwise is correct in point of fact.

A. It is not correct, so far as my knowledge goes. I know of no one, save Mr. Rowley, having the books in use, and I know of his having them in use a considerable portion of the time of the summer and fall of 1875, in November, 1875, particularly, drawing off and preparing the accounts sued upon in the lien claims,
114 and afterwards in examination at the office of Hubbard, Clark & Deacon, and in attendance at the U. S. circuit court at Des Moines. The trustees never at any time removed the books from the Union Bank Building until November, 1877, so far as I know. I did not at any time remove the books from the Union Bank vaults except as stated before, in November, 1877. When removed in November, 1877, they were turned over to the only remaining stockholder, Mrs. A. D. Traer, and have remained in her possession or that of her attorneys ever since, as far as I know. The following books of the Construction Co. have been before the commissioner, Mr. Deacon, while plaintiff's testimony was being taken; the cash book journal and ledger of the secretary, Mr. Rowley; the secretary's record; the book of lithographed stock certificates, known as the stock-book; the trustees' cash-book and ledger; Book "A" of assets, and the trustees' record of transfer of stock, and other records in the book of the secretary's record; which books were produced by Mrs. Traer's attorneys, Hubbard & Clark, and which plaintiff's attorneys have had full opportunity to examine, and have done so on a great many occasions. I have examined stock certificate No. 40, issued by the C. R. N. W. Cons. Co. to Henry Clews for fifty shares of stock. No other certificate was issued to Henry Clews that I have any knowledge of. Certificate No. 40, with the assignment on the back in writing and print, is the same certificate upon which the dividends were paid on the Armstrong voucher annexed by copy to my deposition on behalf of plaintiff as Exhibit C, and is now attached to the deposition of Alla D. Traer as exhibit. It is the same certificate of which transfers are entered in the trustees' record, which transfers are by copy annexed to my deposition on behalf of plaintiff as Exhibits F and G, and which mention said certificate as 48, instead of No. 40. The numbering as 48 was a clerical error. I have examined Exhibits 33, 34, 35, 36, and 38, annexed to D. W. C. Rowley's deposition on behalf of plaintiff, being accounts certified to by said Rowley or in part made out by him. These vouchers were paid by the trustees after being certified to as to correctness by Mr. Rowley, whose certificate was required by the trustees in all cases on open accounts. We required his certificate, because his accounts were not ruled up and balance carried down, and we

115 had no knowledge of the accounts personally. We paid no other open accounts, only as certified by Mr. Rowley as secretary.

Int. 13. You stated in your deposition on behalf of plaintiff that you may have noticed the dividend account of Henry Clews on the book of the company after your appointment as trustee and before J. Nelson Tappan assigned the stock, but that such account was not then balanced or ruled up. State whether the condition of the accounts shown by these exhibits annexed to Rowley's deposition, and the Clews account on the ledger, could be determined from an inspection of the ledger while they were unbalanced; and, if not, why not.

Ans. They could not be by any ordinary inspection, but only by going back through the books and checking them up, which would involve going through the books of the company for some time back and since the opening of the account, and because there was nothing in his cash-book or journal or ledger to *to* indicate that all items had been entered.

Int. 14. The last items in Clews' dividend account on the ledger, before the balance in red ink, is dated March 16, 1874. While the account remained unbalanced and not ruled up, what examination would have been necessary to ascertain the true condition of this account? And state whether you ever made such examination.

Ans. We would have had to examine the books of account, being the secretary's cash-book and journal, from the date of the last item. I did not, at any time, examine this account, as the system adopted of paying was to require the secretary to audit and certify any open accounts embraced in his books on right of way indebtedness to require the general agent certify to the correctness of the claim from a personal knowledge.

Int. 15. Mr. Rowley, in answer to direct Int. 36, deposition on behalf of plaintiff, says: "I think Mr. Traer kept considerable Construction Co. money under his own individual name here and at Vinton in the banking house of his brother." State whether you kept Construction Co. money after you were appointed trustee in the manner surmised by this witness.

Ans. I did not. Neither the trustee nor the Construction Co. had an account with Traer Bros. prior to January, 1876, and
116 during the year 1875, nor was there a deposit by myself or the trustees of the Construction Co. funds of any kind unless temporarily as a convenience in collecting subscriptions at that point, and that of small amount, less than one thousand dollars. The general deposit account of the Construction Co. was in the name of the trustee at the Uuion Bank. I don't remember whether certificates of deposit at other banks were in the name of J. W. Traer, trustee, or J. W. Traer. I did not individually make any use of the funds belonging to the Construction Co. while I was trustee.

Int. 18. Explain how Construction Co. money came to be on deposit with Traer Bros. at the time the Clews dividends were paid, to

the amount indicated in your former deposition, if not deposited by the trustees.

A. There was an accumulation of collections by Traer & Gilchrist dating from January 3, 1876, which had been deposited by Traer & Gilchrist direct as it came in from time to time, running along up to March. These funds arose from fifty-three litigated cases carried to the supreme court by Traer & Gilchrist and Cook, Richmond & Browning, of Davenport, and decision of the supreme court on which had just been rendered at that time.

Int. 19. Mr. Rowley in his answer to direct int. 50 in his deposition, assumes that the item of dividends to Clews' standing on the books was familiar to all of the trustees. State the fact in relation to this matter, so far as you are concerned.

A. The item of dividends to Clews of any amount did not come to my knowledge through Mr. Rowley or anyone else until late in the fall of 1875 or the beginning of 1876, when my attention was first drawn to it by noticing an open account on the ledger, as I testified on direct examination on behalf of plaintiff. Mr. Rowley, to my knowledge, never certified to the trustees any accounts, only in detail where the parties were pressing them, and it became necessary for him to do so. I did not hear the Clews dividends spoken of or discussed at any of the meetings held with reference to the dissolution of the company. In my presence I am certain there was no report nor discussion of indebtedness of the company. The only report that I know of being considered was the one made as
117 to the assets of the company by myself as general agent. At the meeting of November 26, 1875, (a copy of the record of which is attached to my former deposition as Exhibit O), there was no discussion as to the Clews indebtedness in my presence that I heard.

Int. 22. Were you present at any of the conversations or discussions among the stockholders of the Construction or Railway Co's with reference attaching or garnishing the Clews interest in the Construction Co., at the suit of the Railway Co., to recover a balance said to be due from Clews to that company, or where it was suggested that compensation should be allowed to resident members of the Construction Co. for their services, and the Clews dividends withheld for that reason?

A. I was never present nor heard any talk relating to or reaching the interest Clews had in the Construction Co. by legal proceedings on the part of the Railway Company. I did hear Judge Greene in February, 1876, insist the funds in the hands of the trustees should be appropriated in payment for personal services of the more active parties here in Iowa, and heard him strenuously insist that there was nothing due the Clews estate in equity, and that he would strenuously resist the trustees taking any action in it.

Int. 23. Did Mr. Rowley, the secretary, deliver to you on the 20th of February, 1875, being the day when you accepted the trust as trustee of the Construction Co., the note or certificate attached to your former deposition by copy as Exhibit D? If not, state when you first saw or received the same.

A. He did not deliver the certificate prior to, nor did I ever see it prior to, March 19, 1876. I here produce the certificate and the voucher on which the Clews dividends were paid as attached together at or about the time of payment, and which have remained so ever since. (Said original voucher and certificate are hereto attached, marked Exhibits "C" and "D.") The name D. W. C. Rowley on the back of said voucher is in my handwriting, — simply signified that the account on which the voucher was based was included in Mr. Rowley's books, and had been referred to him as to its being correct and unpaid. All accounts referred to him the vouchers show the same notation, I believe. I did not tell either D. W. C. Row-
118 ley or S. L. Dows that I had purchased the Clews stock. I may have said that Mrs. Traer had purchased, or that I had purchased for her. I was present at the time the deposition of J. Tracy was taken, and heard his testimony as taken.

Int. 28. When and where did the first conversation to which Mr. Tracy refers in answer to direct int. 7 take place?

A. I remember of having some conversation with Tracy; think perhaps it was in the railway office in the Union Bank building in February, 1876; that is my recollection. The impression as to time is fixed to some extent by its being after my being in New York, at which time Tappan solicited a proposition for the stock interest of the Clews estate.

Int. 30. Mr. Tracy, in detailing that conversaiion, says: "He, Mr. Traer, did not know what the stock was at that time really worth, but there was $10,000, or thereabouts, in the bank of Traer Bros. at Vinton that belonged as dividend to the Clews stock;" and, speaking of a subsequent conversation with you, says: "Mr. Traer said to me that Clews' assignee in bankruptcy had ascertained about the money on deposit at Vinton, or some one acting in the interest of the assignee, and had come out here, receipted for it and taken it away." What statements, if any, did you make to Mr. Tracy in either of these conversations of the character thus detailed by you?

A. I did not say to Mr. Tracy that there was $10,000 or any other sum in Traer Bros.' bank belonging to the Clews stock. I may have said that there were $8,000 or $10,000 of subscription that would probably be collected through Traer Bros. that would go towards paying dividends, meaning generally. There was no money in the Traer Bros.' bank at that time beyond a moderate amount of collections, of which I had not a report, and which had been collected by Traer & Gilchrist. I did not say to Mr. Tracy at any subsequent time that the assignee of the Clews estate in bankruptcy had learned of funds on deposit at Traer Bros. I may have said in casual conversation that the assignee of the Clews stock had claimed their rights and collected dividends. Mr. Tracy, at the time of the first conversation, seemed quite anxious to enter into speculation, but finally said the uncertainties of the situation of that stock
119 interest were such, owing to litigation, present and prospective, as he learned from Gen. Winslow, that he deemed it too hazardous and unsafe. At the time of this conversation with Mr. Tracy there was, in point of fact, no deposit in Traer Bros.' bank of

any amount belonging to the Clews estate, nor any special deposit belonging to any one, except the moderate amount of local collections made at that point by Traer & Gilchrist, the first deposit of which was dated January 3d, 1876, and which had been added to as collections came in until there was perhaps $2,000 or $3,000 there at the time of this conversation, but report of which to the trustees did not come until March 19th, 1876.

Int. 32. Mr. Tracy is asked in direct Int. 17 "whether any men tion was made of Mr. Clews, or his assignee in bankruptcy, being in ignorance of said dividends having been declared," and answers, "Yes, the impression left on my mind from the conversation is that Clews, or his assignee in bankruptcy, did not know of the declaring of the dividends or deposits of the money at Vinton." What, if anything, did you say in your conversations with Mr. Tracy to the effect indicated by his said answer?

A. I said nothing to Mr. Tracy that I can conceive of that warranted any such impression. I had no means of knowing what information Mr. Clews had given his assignee in bankruptcy as to dividends. I did have the best of reasons to think, and now do think, that Mr. Clews did know as to the situation, but for reasons of his own withheld all information from his trustee from July 19, 1875, until February or March, 1876. I may have said to Mr. Tracy, that Mrs. Traer owned a large interest in the stock, or that I had purchased a large interest for her. I never said to him that I owned a large or controlling interest in the stock.

Int. 34. Look at Exhibit No. 9, attached to deposition of J. Nelson Tappan, being letter from you to Tappan, dated March 7, 1876, and explain how this letter came to be written?

A. I wrote the letter either at the request or on the authority of Mr. Martel, as I understood it. I think the proposition was made in behalf of some of his friends, and possibly may have come through them to me; I do not clearly remember at this late date.

120 I remember that I was requested, as I have stated before, to make this offer to Mr. Tappan. I mean that Mr. Martel authorized the writing of the letter, by a knowledge and acquiescence in the proposition. I cannot clearly remember now, it is so long ago, as to who the person was who requested me to write this letter further than I have already stated.

Mr. Howard did not, at the time the Clews dividends were paid to him, or at any other time, surrender the certificate of stock to me.

I think it was left by said Howard, after the dividends were paid, with J. C. Traer.

Int. 40. James Armstrong testifies in deposition on behalf of plaintiff, that he was employed by you in relation to the purchase of the Clews stock, and that he received authority from you, verbally, for the purchase of said stock in the winter or spring of 1876. State to what extent you ever employed said Armstrong or gave him authority with reference to the purchase of said stock.

A. I have stated in my direct examination on behalf of plaintiff that I had some conversation with him as to the disposition of the

trustee to sell the Clews stock, and asked him if he would act in case of an order from the west. I had no other conversations with him, prior to the purchase of the stock, about the matter. I did not understand it as employing him, but am unable to say what he understood. I had reason to think that he was employed in writing by J. C. Traer, and that he has confounded J. C. Traer with J. W. Traer, as is very often done. I wrote no letter to the said Armstrong prior to the purchase of the stock, nor orders for the purchase thereof. It is possible that Mr. Armstrong, on receiving an order from other parties, may have supposed it referred to the conversation between him and me. In point of fact he was not acting for me directly or indirectly for the purchase of the stock. I have never paid him anything, nor has he ever called upon me for anything for his services in connection with the purchase of this stock.

Int. 43. Henry Clews, the plaintiff, testifies in answer to direct int. No. 8, deposition on his own behalf, to certain conversations between him and you at his office in New York, as he says, in
121 October, 1875. If you have read this answer of Clews, state when the conversations he refers to took place, and what means, if any, you have of determining the time.

A. I have read the answer to the Int. in question. The conversations referred to occurred between the 15th and 20th day of July, 1875. I fix the date positively by dates in my memorandum book, by entries in my bank book, by the dates of papers which I wrote, dated, and received during the same visit in New York. I further fix the time, aside from writings, by a clear recollection of the fact that it was immediately following the appointment of Gen. Winslow as receiver of the B., C. R. & M. R'y, which was in the early part of July. I have stated in my direct examination on behalf of plaintiff, that I came to call on Mr. Clews, from the fact that a careful examination of the schedules filed in the office of the register in bankruptcy did not disclose any shares of the C. R. N. W. Cons. Co. stock as scheduled, and I went to him for information. He at first said he had conveyed it to some of his creditors, and the further conversation appears in said direct examination. His statement in said answer to Direct Int. 8, that he asked about, or that I made any statement to him as to dividends of stock, bonds, or declared cash dividends, is not true. I gave him my guess of the possible outcome of the assets as being from $1,500 to $2,500, but in answer to the question, what I would give for the stock, I said if I were going to buy, in the then situation of the company and prospective litigation, I would not care to risk buying it at more than $750 to $1,000. I did not say to him that I had purchased any of the stock of the company, nor had I in fact purchased any stock whatever. He did not say to me that the shares belonged to his estate, but represented that the equity belonged to Prentiss Bros., as explanatory of the fact that they had not been scheduled. I did not advise him to make an assignment of the stock, but he asked me to draw an assignment that would conform to the practical assignment before made to Prentiss Bros. I drew it in form as he had requested, and the droduction of it will show that it was drawn in favor of

Prentiss Bros. I remember of no conversation about one Howard, of Chicago. I made no proposition to him for the purchase of the stock, but at his request let the matter rest. I did not, in this
122 conversation with Mr. Clews, advise him to hide said stock from his creditors or trustees, or advise him to assign it to some friend, nor did I suggest Mr. Prentiss, who was an entire stranger to me. Being but a modest Western man I was somewhat abashed at being found on Wall street, entirely too much so to undertake to advise the ex-financial agent of the United States Government, nor did I realize that he was in need of a guardian. I did not tell Mr. Clews that said fifty shares of stock would not realize over $1,000 to $1,200. I gave him my guess, as stated before. Mr. Clews did not tell me that this stock belonged to his trustee in bankruptcy. He acted to me as though he was pretty well informed as to the value of this stock interest and wanted to make something out of his estate. In my direct examination on behalf of plaintiff I stated that the first assignment drawn was executed by Mr. Clews in my pressence, but finally it did not seem to suit him and he tore his name off of it and requested me to draw another, which he retained. Both forms of assignment ran to Prentiss Bros., and were the only ones which I drew.

I have examined Exhibit No. 2, attached to deposition of J. Nelson Tappan, on behalf of plaintiff. It was written February 4, 1876, in the office of the trustee in bankruptcy of Henry Clews, in New York city, and in answer to the inquiry of the gentleman in charge of the office, a Mr. Southwick. This is the same letter to Tappan referred to by me in my deposition in behalf of plaintiff as having been written by me at Mr. Tappan's office before my interview with him. I remember of but the one interview with Mr. Southwick at the office, and had none elsewhere. I gave Mr. Southwick, in that interview, a full explanation that the construction company was urging a mechanics' lien for some $90,000 against the B., C. R. & M. R'y, on account of work done on the original contract between the two companies, and of the filing by the railway company against the construction company, and the individual members thereof, a cross-bill (referring to Exhibit 28 to my deposition on behalf of plaintiff), claiming judgment in some hundreds of thousands of dollars, and explained to him the expensive nature of the litigation.

Int. 54. Did you tell Mr. Southwick then, or at any other time the the Clews stock was entitled to no other dividends besides
123 that already declared by the trustees, viz., $200, except from moneys thereafter to be realized from the assets of the company?

A. I made no statement to Mr. Southwick as to dividends, except dividends made, or to be made, by the trustees. I probably stated that the trustees had made no other dividend than the $200, which was true. I recognize Exhibit No. 3 to deposition of J. Nelson Tappan, being business card of Traer Bros., as a card I handed Mr. Tappan when I called upon him at his office in the city-hall at the time of the interview, January or February, 1876, and the signature

on the back of the card as being in my handwriting. R. A. Southwick was neither authorized nor requested at any time or in any manner to act for me or make any statements or representations in regard to the Clews stock or dividends, to J. Nelson Tappan or anybody else, or to do anything of that kind. At the time I talked with Mr. Southwich he seemed to be the chief clerk in the office of the trustee, J. Nelson Tappan. I made no statements to J. Nelson Tappan whatever as to any dividends, except the first one declared by the trustees, of $200, February, 1876, and that, I believe, was in writing (see Exhibit 2 to Tappan's deposition), and authorized or directed no one to make any representations for me as to dividends.

Int. 59. What experience, if any, have you had as an expert in the examination and comparison of handwritings and signatures?

A. I was the active cashier of Traer Bros., or the preceding banking firms from 1858 until 1865; the experience that one would ordinarily have in such a business. I am somewhat familiar with the handwriting of J. Nelson Tappan, having seen it in a business way for some years. I have seen it in correspondence in connection with the business of Howes & Macy, of whose estate he was trustee, and have also seen it in New York.

Int. 61. Examine stock certificate No. 40, issued to Henry Clews, and the assignment upon the back thereof, which certificate and assignment are annexed to the deposition of Alla D. Traer as Exhibit No. 64. Compare the written words and letters in said assignment, "together with all rights and dividends declared. J.
124 N. T.," with the date and signature of "Henry Clews, pr. J. Nelson Tappan, trustee," attached said assignment, and also with the signature of J. Nelson Tappan to Exhibit E attached to deposition of Henry Clews, and with the signature of said J. Nelson Tappan to his deposition herein taken before Thomas H. Barrowsky, and also with the signature of J. Nelson Tappan to his deposition taken herein before James T. F. Randolph, and state whether or not said written words and letters in the assignment of the stock are in the same handwriting as the signatures aforesaid, and are the handwriting of J. Nelson Tappan.

A. I have made a careful examination, and have no doubt whatever that the written words and initials, and the signatures as aforesaid, are in the same handwriting, and were written by J. Nelson Tappan.

Cross-examination:

Int. 1. At the time the trustees were appointed did you understand that all of the property of the company was transferred to them, both real and personal, as soon as the secretary made the conveyance, as directed in the resolution?

A. I understood the right to the possession of it was in the trustees from that time forward. I did understand that we were entitled to possession and clothed with discretion in winding up the affairs of the company.

Int. 3. Do you not understand that you were debited by the sec-

retary, or should have been, under the resolution, with all the real and personal property of the company?

(Defendants object, as immaterial; the resolution speaks for itself, and the duties and obligations of the trustees can neither be enlarged nor diminished by any understanding of the witness.)

A. I suppose we should be properly debited with anything we received.

Int. 4. Should you not have been properly debited with all the property whether received or not, and should you not, in your credit account, account for all the property before final settlement?

A. That might be a matter of opinion upon which parties
125 might differ. Technically speaking, it might have been the proper course. In law I suppose we were chargeable with the property of the company.

Int. 5. If any other parties were permitted by you to retain possesion of any of the company's property after you entered upon your duties, and you knew of such possession, do you not understand that you were responsible for the property the same as if you had personal possession of it?

(Defendants make same objection as to cross-int. 3, and further because calling for the law and not the fact of the case.)

A. I knew the trustees in law were liable for any failure to reasonably prosecute the rights of the company and discharge their duties. After we entered upon our duties as trustees I kept the accounts of the trustees myself, and no one else—I believe no one besides myself kept the records of the doings of the trustees. The records were looked over and signed from time to time by Dr. Ely, my co-trustee. During the time from February 20, 1875, to November, 1877, I had full and free access to the books, as had all other stockholders.

Int. 9. Examine Exhibit No. 65 and compare the same with the cash-book of trustees, page 28, and note the words "Am't forward, 22,612.98," and state what those figures there indicate.

A. They indicate the total amount of case or cash items treated as cash coming into the hands of the trustees previous to that date; and on the opposite page the words and figures, "Am't forward 11,266.16," indicate the amounts paid out up to that date. In round numbers, the amount of cash received from what I have designated as the fifty-three litigated cases in Benton county was between $7,000 and $10,000, as near as I can get at it. I cannot say from whom or at what precise time I learned that these litigated cases had been decided in favor of the railway Co. in the Supreme Court; some time in February, 1876, as near as I can remember. The Traer who was a member of the firm of Traer & Gilchrist, who was attorney for the company in those fifty-three litigated cases, is my brother,

J. C. Traer, the same who was a member of the banking firm
126 of Traer Bros. During the year 1875 and the first part of the year 1876 I saw him occasionally; I can't now say how often. I saw him perhaps oftener than once a month in the latter part of 1875. I was sick and confined at home the larger part of January,

1876, and may or may not have seen him; I do not now remember. My best impression now is that I saw him more or less in February following. While the fifty-three litigated cases were being fought over before the referee and in the district court, I suppose he, as attorney, and I, as trustee, did take a deep interest in them, and frequently speak of them of each other. The length of time elapsing between the appeal from the district court and the decision of the supreme court was such that the matter had grown rusty somewhat.

I do not now remember what Mr. Rowley's monthly salary, during the last few months that he was secretary of the company, was. My best impression would be that the larger part of the time it was $75. He was secretary of three different companies, and gave a portion of his time to each and drew a salary from each. We did not pay Mr. Rowley as secretary any salary for services rendered after March, 1875. The last payment on regular salary, I think, was on March 9th, 1875. The last moneys paid him for services in writing up his books and making out accounts in the lien cases was April 1st, 1877, as shown by voucher 4. (Copy of said voucher is hereto attached as Exhibit No. 67.)

Int. 20. Your attention is called to the entry on your cash-book, page 33, as follows:

March 9.	34.	Salary account D. W. C. Rowley Feb. & March, 1875	4.	100 00

What do the figures in red ink, "34," indicate?

Ans. The page of the ledger in posting. The figure "4" indicates the number of the voucher. I have that voucher and here produce it. (Copy of said voucher is hereto attached as Exhibit No. 68.)

Int. 23. This appears on the cash-book as paid March 9, 1876. The voucher makes it a year earlier. Which is correct?

Ans. The voucher. There was an omission in posting. These
127 two Exhibits, Nos. 67 and 68, show all the money paid to Mr. Rowley for services, by us as trustees.

Int. 25. In your direct examination you mention Exhibits 33, 34, 35, 36, and 38 as accounts certified to you by the secretary, Rowley, and which you have called open accounts. Were there any other open accounts certified to by him? If so, will you exhibit them?

Ans. There may have been some other small accounts. I don't now remember. They are unimportant accounts. I now point out the Union Savings Bank account, Construction Co. ledger, page 168, for voucher Exhibit 35; Brainard, Pomeroy & Co., p. 163, same ledger, voucher Exhibit 33; Wm. Nevin, p. 173, voucher Exhibit 34; Brainard, Pomeroy & Co., p. 163, voucher Exhibit 37; B. C. R. & M. R'y Co., p. 55, voucher Exhibit 38; am not certain as to the last. These are substantially all the open accounts certified to us by Mr. Rowley; there may be some others. The Clews account, page 178, was also open when certified. These accounts referred to in vouchers 33 to 38 have not now underneath them on the ledger the parallel red lines called balance lines. We received

the certification of these several accounts, Exhibits 33 to 38, at or about the date of the vouchers, I don't remember specially. I fix the time by the date of the vouchers, as near as I can without a very critical examination. Nos. 33 and 36 are from the same account, Brainard, Pomeroy & Co., and indicate a running account. There are no red line date marks indicating the time of receipt of the certification on these several vouchers. I don't know as there was any occasion for it; they were not disputed account. The Clews account was a disputed one, as I have stated before in direct examination on behalf of plaintiff. I don't just now remember of any other disputed accounts besides the Clews account. I cannot undertake to say or fix precise dates now as to when I first learned that the Clews dividend account was disputed. I should say, as near as I remember, in the winter of 1876, possibly in the fall of 1875. I have stated before that when I first noticed the open account upon the books. I asked the secretary and he said the account was in dispute or something to that effect. I think some time in February, 1876, Judge Greene insisted strenuously that in equity was there nothing due the Clews estate and that the trustees should not
128 recognize it, or to that effect. I do not remember now that I had any further conversation with the secretary as to the grounds of the dispute. I took it that there were assessment drafts against Clews unpaid that were not written up, as I knew such had been the case with a number of other stockholders when the dividend was declared.

Int. 39. Did you ask the secretary why this account was disputed?

A. I don't remember particularly now what I asked of him beyond what I have stated. I got the impression at the time that Judge Greene insisted that any adjustment of the account should only be made by a settlement of Clews' account with the railway company.

Int. 40. Were the liabilities of the Construction Company so numerous and large that you did not regard a debit against the company where about $12,000 was ultimately paid by you as worthy of examination and detailed inquiry when you observed the same on the books?

A. I have not stated that I observed such balance on the books. The accounts generally were opened and were liable to have other postings from the journal or cash-book. I don't remember now how many items composed the Clews account when I observed it. It may have been just as it is now, except that it was not ruled up and the balances carried down. I rather think no items have been added to the credit or debit side of said account since I first observed it, except the red ink ruling and balancing figures, and words "balance" and "by balance." I can't now undertake to state what time in 1875 or 1876 it was when I saw that account first, the fall of 1875 or early winter of 1876. I don't remember any particular circumstance that called my attention to the account.

Int. 46. May it not have been that the fact that the stockholders passed a resolution in reference to the purchase of the Clews stock

Nov. 26, 1875, called your attention to it? Would not that naturally prompt you to examine the book concerning the matter?

A. It may have been something of that kind that called my attention to it. It might have prompted me to examine the book.

Int. 47. When Mr. Rowley told you the account was disputed, and made no further explanation, were you satisfied and there let the matter drop, so far as he was concerned?

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A. I don't remember particularly whether the matter may not have been referred to again. I don't remember anything else occurring at the time. As nearly as I remember, it occurred where the secretary kept his office, in the directors' room of the Union Bank. I don't remember of any one being present. I have not said that it was referred to again with Mr. Rowley. I said it might have been. I don't remember any particular conversation with him at any other time.

Int. 52. Do you intend to leave the impression that when you called Mr. Rowley's attention to an account where the figures involved thousands of dollars, as seen at a glance, the only remark made by him was that the amount was disputed, and that nothing further was said by either of you, and you gave the matter then no further attention?

A. The question, as asked, is an assumption not warranted by my answers heretofore. He did make other remarks; the precise language I cannot give. The impression left on my mind was as before expressed. I cannot give the substance of the language nearer than I have already done, and by the impression created. I cannot now recall whether there was or was not anything said by either of us concerning the amount. The amount was nothing astonishing, nor in comparison with what it was thought Clews owed the railway Co.

Int. 56. Did not Mr. Rowley mention some reason why the account was disputed?

A. I am of the impression that he spoke of the equities existing between the railway Co. and Clews, and of Judge Green's determination to require a settlement. I cannot recall the precise terms, but it created the impression as I have stated before.

Int. 57. Did you understand that a debt due the railway Co. could be offset to a credit on the Construction Co.'s books in favor of the estate of Clews, then in bankruptcy?

A. The question assumes that it was known who owned the Clews interest. Strictly speaking, one could not be offset against the other, but the construction and railway companies were composed substantially of the same men, and Judge Greene, Wm. Greene, Ely, and Rowley were heavily involved as endorsers for the railway Co., and claimed that Clews was heavily indebted to the railway Co., and hence the equities that were claimed. The railway was at that time in the hands of the receiver, and those individuals were in the hands of the sheriff for endorsing for the railway Co., in the sum of over $100,000. I wish to be understood as endorsing the date of the receipt of Mr. Rowley's certification of the Clews account on the same because of the failure or refusal on

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the part of the secretary up to that time to certify that there was anything due upon that account, and because it was the date on which it was delivered. I may or may not have noticed the figures "1875," and am inclined to think it was a clerical error of his, because I think he wrote it in the room on that day.

Int. 60. That the account was in dispute, then, was not the reason why you made the endorsement of the date, was it?

A. Its having been in dispute led me to be more particular, perhaps. I do not recall a visit by me to Mr. Rowley, as testified to by him, at his office, on the day Mr. Howard arrived in Cedar Rapids and demanded the Clews dividends.

(Defendants object, as immaterial, foreign to the issues, and not cross-examination.)

A. My recollection is that I found Mr. Howard and Mr. Rowley in the directors' room of the Union Bank, where we both had our desks, when I first came down in the forenoon, about ten o'clock. I cannot now say whether anything was said by Mr. Rowley then, or at any other time than the one previously mentioned, about the Clews account being in dispute. There may have been.

Int. 63. Did you, after your interviews with Mr. Rowley and Judge Greene, where you spoke of the Clews account, make any investigation into the merits of the dispute?

A. I don't think I did. I had never made any investigation into the merits of the account in favor of the Clews estate previous to March 19, 1876. The account was not one of my creating.
131 There was no evidence as to who controlled it, nor had the situation of the trustees, in point of fact, been such that they were warranted in paying out any large amount of money at a very short time prior thereto.

Int. 65. As a matter of fact, did you know or understand that the attorney, Howard, was the attorney of your wife when you paid him $11,913.75?

A. I did.

Int. 66. Do you suppose the fact that you were paying that money to your wife's attorney lessened your zeal in investigating defenses that might be made against the payment, which otherwise, as trustee, you would have made if the claim had been presented by the attorney of a stranger?

(Defendants object, as immaterial, incompetent, and foreign to the issues.)

A. It would be quite natural if it had lessened my zeal, but it does not necessarily follow that it did do so.

Int. 67. Were you not then placed in a position where personal interest might have been in conflict with duty to your trust?

(Defendants make same objection, and further because there is no issue or claim on either side that the dividends paid were not due; the question calls for mere speculation on general abstract principles.)

A. Possibly so; hence my requiring the officers who had been instrumental in placing the account in the situation it was to certify and audit as to its correctness.

Int. 68. Did you pay the account on the certificate precisely as you paid the accounts as shown in vouchers Exhibits 33 to 38?

(Defendants make same objection as last above.)

A. I don't know that it is precisely. I paid the amount certified as due upon the account, with the rate of interest which I knew the company was legally liable for.

Int. 69. If the certificate was given March 19, 1876, and should have been so dated instead of February 20, 1875, was not that the official information that there was then due on the ac-
132 count the amount as stated in the certificate?

A. Perhaps so, and yet at the same time not have altered the legal right to demand and receive six per cent. interest.

Int. 70. Did you not go outside of the official information contained in the certificate if it had been dated as of March 19, 1876, when you paid instead of $10,500 nearly $12,000?

(Defendants make same objection as last above.)

A. Perhaps so, but not outside of the power legally of the trustees.

Int. 71. Have you examined the deposition of your late co-trustee, Dr. Ely, and have you noted the statement that he was solicitous that the trustees should be ready with money to meet the payment of the Clews dividend should it be demanded, and if so, how do you account for the fact that one who was practically an advisory and assistant trustee, and who did not have the matters of the company generally in hand, should know more as to the indebtedness of the company to Clews, and should be more solicitous to be ready for its payment when demanded, than yourself?

(Defendants make same objection as last above.)

A. I heard Dr. Ely's testimony, and don't understand that I am called upon to account for any one else's knowledge. I might surmise that his being a member of the executive committee and treasurer of the railway company, and having testified to the talk of attaching or garnishing the Clews interest in the Construction Company, that he would naturally have talked with the president and other officers of that sompany. Dr. Ely's memory is so treacherous, to those who know him, that I should not attach much importance to it; not meaning anything disrespectful, but meaning that he is very easily confused and forgetful.

When in New York in July, 1875, I had not from any source previously received any intimation of the Clews account. I am not clear as to whether my attention may not have been drawn to the account, as stated before, as early as October, 1875. I mean to say that I don't remember whether my attention had been drawn to the Clews account at the time I was in New York
133 in October, or not. When in New York the last of January or first of February, 1876, I had had my attention drawn to

an unsettled account, as stated before, and hence my request, on notifying the trustee in bankruptcy of the Clews estate, to make an examination in his own way. I do not remember who drew my attention to that account. I did not have any conversation with Mr. Tappan about accounts and dividends, save the one made by the trustees, or to be made by them. I had but very little conversation with Mr. Southwick, except as to the railway lien claim and character of the assets. I wrote the letter of February 4th, directed to Tappan, in his office. The subject of the secretary's account was not adverted to that I remember of. I said nothing to Mr. Southwick about the dividends in favor of Clews declared previous to my trusteeship. To the best of my recollection, I returned to Iowa from my October visit to Now York some three weeks previous to the writing of the letter Exhibit B to Clews deposition. I did not send James Armstrong any telegram prior to the purchase, or cause or request any to be sent to him. I did not know, and have not since learned, of any telegrams being sent to James Armstrong in regard to the Clews stock prior to the purchase of the same.

Int. 85. State how long previous to the writing of letter Exhibit 27 to your former deposition, enclosing stock certificate to J. Nelson Tappan, you found that certificate or knew of its existence.

A. I don't now remember particularly; not but a few days before sending it, however, would be my impression. I think I sent it at once on receiving it. I do not now remember whether I had an interview with J. C. Traer between the time of receiving it and sending it. I may have seen him or may not. When the certificate turned up, this old stock book, as near as I know, was in the possession of the secretary in the Union Bank vault. It used to lie around there with the other books. I can't now undertake to say who found that certificate first. I don't know of anybody's looking for it. I don't recollect now what called it up. I don't now recollect examining that stock book up to that time since my trusteeship, but may have done so. I have seen the old stock book
134 since my first examination, and noticed that all numbers inclusive of 41 upwards were in the book yet.

Int. 93. Previous to the issuance of No. 40, if all the others had been issued, as stated to be the custom by the secretary, and had been cut out, would not No. 40, if written up, be the first full page when the book was open?

A. It would. If a person was examining the books for certificates written up, I think that would be the one which would first be seen.

Int. 95. In your letter to Mr. Tappan of February 14th, enclosing the dividend of $200, you state that no certificate had been issued to Mr. Clews. How did you know that?

A. I think the secretary told me so. I don't remember that I made any personal examination into the matter or requested the secretary to do so. I don't now remember how I came to be conversing with the secretary in regard to the matter when he told me no certificate had issued. I may have asked him the question. I don't know why I should have been seeking information in regard

to it, unless because of the expressed wish of the trustee to sell it. I understood Mr. Tappan to express to me a desire that I should find a purchaser for the Clews stock. I have related the conversation as near as I remembeeed, in my direct examination on behalf of plaintiff. I did not understand from such conversation with Tappan that he desired me to act the part of a broker in any way in finding such purchaser for him.

Int. 102. If you found such purchaser did you expect Tappan to pay you for your services in any way, or did you anticipate that you might sell the stock for an amount sufficient to satisfy you for your trouble and satisfy Tappan?

(Defendants make same objection as last above.)

A. I don't remember now that I had any particular anticipations or expectations. The letters speak for themselves. I have answered before that as the result of my conversation with Mr. Tappan or his clerk, Mr. Southwich, I did not, in a literal sense, understand myself to be employed to negotiate in any way in reference to the Clews stock. Nor in a general sense. I remembered Mr. Tappan had proposed to sell the stock to me, and that I said to him that perhaps I might be instrumental in sending him some one
135 who would buy it. I can't say that it was in pursuance of this that I called on Mr. Armstrong and had a conversation with him, wherein I asked him if he would act in case of an order from the West, but the remembrance of it when I called upon him upon other business may have led to the conversation with him that I have previously stated.

Int. 106. If Mr. Armstrong received an order from the West in reference to purchasing the Clews stock, was that order sent to him by some one who know of this conversation?

A. I don't know only by hearsay.

Int. 107. Did you tell anybody of this conversation with Armstrong; if so, whom, and what did you say to them? Give the whole conversation.

A. I mentioned the disposition of Tappan to sell the Clews stock to Mrs. Traer, on my return home, but I decline giving conversations between myself and wife.

Int. 108. Did you mention the conversation with Armstrong to her? We do not ask for the conversation with your wife, but as to whether you mentioned this fact.

A. I don't remember clearly now whether I did or not. I don't remember mentioning to J. C. Traer the conversation with Armstrong or Tappan, or having any conversation with him about it prior to the purchase of the stock.

Int. 110. Was it in pursuance of the conversation had with Tappan that you solicited a proposition in reference to the stock from Peter Martel, or some one purporting to act for Martel?

(Defendants object that there is no testimony on which to base the question.)

A. I do not now remember distinctly what led to the matter,

only by referring to the letters themselves. I refer to Exhibit No. 9 to Tappan's deposition.

Int. 111. Referring to Exhibit No. 9, you say: "I have succeeded in eliciting from Peter Martel a proposition of $15 per share"; what effort did you make or had you made in eliciting that proposition?

A. I don't remember now; it is too far away to recall. I don't remember as to what amount of effort there was in the matter.

136 Int 113. In that letter you say: "Perhaps I can raise it enought to pay commission for sale, which will be 3 per cent."; what right had you to charge Mr. Tappan a commission for services which he had not requested?

A. I don't understand that the letter carried the impression that there would be a commission charged unless the proposition was accepted and closed up. In soliciting a proposition from Martel, or some one else in his behalf, I mean to say I was acting for myself, and desired to make a small commission, if I could. I do not particularly remember now that any one else that I talked with, with the view of eliciting propositions for the purchase of the Clews stock. When that certificate of stock turned up I do not remember of communiating the fact to any one besides Mr. Tappan. I may have mentioned it to others. I could not say to whom. I have no special recollection of mentioning it. I do not remember of mentioning to any one that I had sent the certificate to Tappan. It is possible I may have done so, however, and not remember it now. I think Mr. Rowley knew of its being sent, but am not positive.

I have not stated that I or the trustees had deposited any money in the bank of Traer Bros., about January 1, 1876, and later. I did state that there had been an accumulation there from collections made by Traer & Gilchrist, commencing January 3, 1876. The account was in the name of C. R. N. W. Cons. Co. There was none of that money that I am aware of deposited in my name by the attorneys to my personal credit or as trustee. I think the cash-book shows all the items of the deposits made at Vinton, beginning with January 3d. I have the list as deposited in the bank, or bank-book, in J. C. Traer's handwriting, and will produce it.

(Copy of said bank-book from beginning to April 1, 1876, inclusive, hereto attached as Exhibit 69.)

Int. 124. What amount, approximately, had been collected at Vinton, February 1, 1876, during the preceding months, and to whose credit was this placed?

(Defendants object that the plaintiff has already called for the book, which is the best evidence. Defendants' attorney tells witness to refer plaintiff to the book.)

137 A. I refer plaintiff to the book.

Int. 125. Had you any funds deposited personally or as trustee in the City National Bank or First National Bank of Cedar Rapids belonging to the company?

A. I think there was some on certificates of deposit perhaps in

both of those banks. I think they were in my name as trustee—may have been personally. I am unable to say now how much in the aggregate was so deposited about February 1st, 1876; I have no data to refer to. Whatever cash the trustees had on hand was in bank. All the money was on hand and in bank that the books show a balance of on February 1st, 1876. Approximately there was some $6,000 to $9,000 of that balance in the banks in Cedar Rapids. On March 1st the amount remained just about the same, as near as I can tell. It was fluctuating more or less. On March 19th I think there had been some increase, but the way entries are made I can't tell exactly. I refer the gentleman to the books.

Int. 131. Referring to cash books, page 34, entry "T. S. Palmer, $400, $113.10," state whether that is the Palmer who was a party in R. R. Co. *vs.* Palmer, 42 Iowa, 222, and whether that is the case you have referred to as determining the fifty-three litigated cases.

A. The case referred to is the test case of the fifty-three, the others hinging upon that by stipulation of the attorneys. The Palmer named on the cash book is the same who was a party to the suit.

Int. 132. In answer to Int. 14, inquiring in regard to the item dated March 16, 1874, the Clews dividend credit, you state that you did not at any time examine this account, as the system adopted of paying was to require the secretary to audit and certify any open accounts embraced in his books. State whether as a matter of fact you as a stockholder were not aware that dividends were declared December 15, 1873, and January 31, 1874, in cash, in favor of all the stockholders, and if you had examined the items contained in the Clews ledger account would not the dates and amounts naturally have suggested to you that those credit items were for dividends?

138 A. I was aware of dividends being declared shortly after, but was not present at the meetings. I suppose they would have so suggested if I had taken time to go through the ledger, journal, and cash book and check up.

Int. 133. Take the two items—

"Dec. 15, 1873.	By journal,	103	10,000	00
Jan'y 31, 1874.	" "	105	2,500	00,"

standing upon the ledger, would not the reading of them without explanation and without referring to journal or cash book, have suggested to one as familiar with the affairs of the company as you were that these two items were credits for dividends?

A. I had but little familiarity with the secretary's books. The account would not necessarily suggest dividends, but simply an open account liable to have debits or credits, either one, posted.

Int. 134. Were you aware at any time previous to March, 1876, that the resolution had been passed requiring the secretary to write up the books, and had you known that fact from the time of the passage of the resolution?

A. I presume I knew of the resolution in question, from the date of its passage perhaps.

Int. 135. In paying outstanding notes for dividends, had you observed that nearly all of the notes were in favor of non-resident stockholders, all but a few?

A. I don't remember what I observed. I knew that some of them were non-residents. Warren and Squires resided in the East, besides Mr. Clews. It may or may not have occurred to me that while both Warren and Squires presented notes for payment, no notes were presented in behalf of the Clews stock. I don't recollect.

I called on Mr. Clews in the first instance to ask him if he was interested in, or what disposal he had made of the stock formerly belonging to him. I knew there was some stock apparently at one time belonging to his estate, and expecting to wind up the company affairs at some time I wished to know who owned or held it.

Int. 140. How early did you entertain the plan of having your wife purchase all the stock in order to wind up the affairs in
139 that way?

(Defendants make the same objection as to Int. 67.)

A. I have not stated that I had any plan at any time to wind up the affairs of the company.

Int. 141. It has been stated by several of your former associates in the Construction Co. that such was a plan or purpose that you had announced. Do those witnesses state the truth?

(Defendants make same objection as to Int. 67, and because there is no testimony upon which to base the question.)

A. If there are any such statements they were not warranted.

Int. 142. Is it not a fact that the purchasing of all the stock by your wife, through you as her agent, was one of the principal means by which the affairs of the company were closed?

(Defendants make the same objection as to Int. 67, and because the question attempts to contradict all of the evidence in the case. Nothing is material but the purchase of the Clews stock, and there is no evidence that the witness purchased that as the agent of his wife or otherwise.)

A. The question assumes what is not true. The ownership of the stock by one party probably did facilitate closing up the affairs of the company.

Int. 143. Was not the purchase of all the stock by one person made in pursuance of a previous plan?

(Defendants make same objection as to Int. 67.)

A. It was not, so far as I know.

Int. 144. In your direct examination you say that Mr. Rowley "did not deliver the certificate prior to, nor did I ever see it prior to March 19th, 1876," meaning Exhibit D. Did you not know prior to March 19, 1876, that there was a balance due the Clews estate of $10,500, or other large sum?

A. I knew there was an open unsettled account, and one which I was not authorized to adjust without the ordinary certificate of the secretary as to its correctness.

Int. 145. Do you want it understood that you did not know, previous to March 19, 1876, that the ledger account of the Con-
140 struction Co. showed a balance in favor Clews of a sum amounting to several thousand dollars?

A. I want it understood that the ledger account was not balanced up and had not been certified to by the secretary prior to that time. I have previously answered that I noticed the open account as it stood on the ledger.

Int. 147. Did you not understand before you went to New York, in February, 1876, that there was a balance of several thousand dollars to the credit of Henry Clews' estate standing on the ledger account, as it appears there on its face?

A. I don't recollect now just what my understanding was at that time. I think probably I knew there was an unsettled account.

Int. 148. Do you wish it understood that you did not understand that that unsettled account showed on its face a balance of many thousand dollars in favor of Clews' estate, at the time you were in New York in February?

A. No; I have not so stated. I said I could not recollect just what my understanding was then.

The cash-book will show what amounts were paid on account of right of way and bills payable after February 1, 1876. I believe $1,550 bills payable, and $584.02 to right of way. I cannot undertake to give what other indebtedness there was against the company February 1, 1876, more than to say there were taxes, legal expenses, my own personal claim, and expenses of litigation; right of way that had not been adjusted or settled. At the time I went to New York, in February, 1876, my recollection is that I went from here to Washington, D. C., and returned via New York. On my return home my impression is that I came pretty direct from New York; may have stayed over in Chicago a day or two. The time from New York here direct, I believe, is forty-eight hours.

Int. 153. At the time you furnished Mr. Southwick with the memorandum marked "Exhibit No. 5," Tappan's deposition, was not the said memorandum made with the expectation and intention that Mr. Tappan would see it?

(Defendants object, as not cross-examimation, and assuming
141 what is in no manner proven.)

A. I have not stated that I furnished Mr. Southwick with any statement or figures, except the statement in writing, Exhibit 2, dated February 4, 1876.

In Exhibit No. 5 to Tappan's deposition, the following words, "practically worthless," "voided by terms of subscription," "worthless and loss deducted," are in my handwriting. I don't recollect as to being present when the memoranda and figures, Exhibit 5, Tappan's deposition, were written down. They may have been copied. I must have seen them, from my handwriting there. The amounts and items are correct, compared with the after and more formal statement, Exhibit 4 to Tappan's deposition, delivered by me to Mr. Bever.

Int. 156. Was not whatever conversation had or memoranda given to Mr. Southwick by you, had or given with the expectation that he would furnish the same to Mr. Tappan?

A. I don't think it was, as I addressed my communication to Mr. Tappan direct. I cannot say for what purpose the memorandum was made upon which I have written the expressions above quoted. It is certainly not such a one as any business man would act upon. The notations I made I suppose were made because they were true.

Int. 158. Did you not make explanation to Mr. Southwick concerning the assets, litigated cases, cross-bills, and B., C. R. & M. R'y Co.?

A. We had more or less conversation; I can't undertake to recollect now just what.

Int. 159. Did you not refer Mr. Tappan to the explanation which you had given Mr. Southwick?

A. I referred Mr. Tappan (see Exhibit 2 for explanations) to Mr. Southwick as to the lien cases.

Int. 161. Did you suppose that Southwick would fail to inform the man in whose business he seemed to be engaged as to the information you had given him?

A. I had no acquaintance with Mr. Southwick upon which to base a supposition, and don't remember that I had any supposition about it.

142 Exhibit 69, the first eight pages appears in J. C. Traer's handwriting, and that of his sons, clerks in the bank. I think the entries on pages 1 and 3, in the main, refer to collections on the fifty-three litigated cases. Of the three following entries, viz.:

"Feb. 11.	To balance	5,009	52
Mch. 22.	" cash	546	73
" 20.	" "	1,000	00,"

the first, in red ink, represents a balance, February 11th; the other two represent cash placed to account.

Redirect:

Int. 1. You have been asked on cross-examination what amount the trustees paid for the right of way after March 19, 1876. State whether the right of way which the Construction Co. was bound by its contract to procure was fully secured by the trustees at any time; if not, to what extent it was not procured, and how the matter was finally disposed of.

A. It was not fully settled. The extent I could only guess at. I would say from $3,000 to $4,000. It was finally compromised in the settlement of the lien cases, in November, 1877.

I met Henry Clews in New York in October, 1875, on the street, and had a few minutes conversation with him only. I think I asked him why the Prentiss assignment had not been filed, and his reply was, in substance, that the question of his discharge in bankruptcy was pending and giving him a great deal of trouble, and he wished to defer the matter, and that he would communicate with me, or something of that kind, before long.

Int. 3. Did Mr. Clews, in that conversation, say anything to you about deferring action with reference to the Prentiss assignment; and, if so, what?

A. He requested me to let the matter rest, and he would communicate with me. I am quite clear that I did not have any other conversation with Henry Clews, or see him at any other place, in October, 1875. I think I was in New York city on that occasion but a part of a day, perhaps over night, leaving the next morning.

Int. 6. State whether this conversation had anything to do with your writing the letter of November 8, 1875, Exhibit B to
143 Clews' deposition.

A. It had. The letter refers to the conversation. The term "progressing" had reference to his discharge in bankruptcy. I don't clearly remember now what the language "I fear I cannot hold Prentiss matter much longer" refers to. I understand now; it had reference to the assignment of equities to Prentiss Bros. Clews claimed to have made.

Int. 9. State why the trustees kept funds which came into their hands from the assets of the Construction Company deposited in these various banks.

A. We thought it safer to distribute the amount, for the reason that the Union Bank was liable, we thought, to embarrassment at any time. It was done in pursuance of a consultation from time to time with my co-trustee.

Deposition of D. W. C. Rowley, taken May 27, '79.

My age is 54; residence, Cedar Rapids; occupation, agricultural implements. Have known J. W. Traer since 1866, and Henry Clews since 1870. I was secretary of the C. R. N. W. Cons. Co. from the time of its organization to its close. Don't recollect whether I was director at the time of its organization, but was soon afterwards. Think the dissolution of the company was in 1875. I had 25 shares in the company in the first place. The capital stock was $500,000, all taken. I don't know where the books of the corporation are. They passed from my possession when the affairs of the company went into the hands of the trustees on its dissolution. They went into the hands of the trustees, who were J. W. Traer, John F. Ely, and William Greene. I delivered the books to Mr. Traer. He was the active member of the trustees. By that I mean he had the assets of the company more under his immediate control and management. So far as I know the other trustees co-operated in a limited way with Mr. Traer. I don't remember what number of dividends were declared on this stock prior to the dissolution. I had
144 exclusive charge of the books up to the time of the dissolution.

Int. 15. How much was to the credit of Henry Clews on the books of the company at the time of the dissolution unpaid?

(Defendants object as incompetent; the books are the best evidence.)

A. I sold my 25 shares to J. W. Traer in July, 1876. I had afterwards 5 more shares, and I sold Traer 30 shares. I received $1,500 for them. I don't remember how much I had received on them by way of dividends. I don't remember how many dividends were paid after the dissolution and before I sold the stock. I cannot, without referring to the accounts, give a fair approximation of how much I received prior to the sale and subsequent to the dissolution. I don't know where the company's book are. I kept a private account, and that will show the amounts received. I have not got those accounts with me. They are in town. I was familiar with the condition of the company, its assets and liabilities, at the time of its dissolution. Can't say that I am now. I don't remember the estimated value of that stock at the time of the dissolution. There was approximate estimates made of its value at the time of the dissolution. A list of the assets was spread upon the record-book of the company. I don't remember whether a written estimate was made of the value of those assets. The list of assets was spread on the books under my direction. I don't recollect whether I did it myself or by a clerk. The assets were not in the trustees' hands as trustees until after the dissolution. The trustees were active in furnishing and assisting in furnishing list of assets according to the knowledge of each as to the assets. Mr. Traer, among the trustees, seemed to have the best knowledge of the assets and their value. I don't remember that there was a definite list of liabilities of the company prepared at that time. The liabilities were small and the trustees were familiar with them. I remember the liability to Henry Clews, being quite large, was spoken of. I don't think there was any other liability larger or anywhere near so large. I do not remember that there was any definite plan or order made at the time of the dissolution for the payment of these liabilities. The books showed
145 the dividends of Clews declared and unpaid, and my recollection is that it was about $10,000. The entries had been made prior to that time. It was not a matter of figuring up. About the time of the dissolution there had been a thorough examination of the assets and liabilities. I remember as present William Greene, Dr. Ely, Mr. Traer, and myself, at various examinations about the time of the dissolution. Mr. Traer took possession of the books of the company about that time, and they remained in the vaults of the Union Bank for some time afterwards. I do not remember and have not the data at hand by which I could now express a judgment what the value of the stock was at the time of the dissolution. I do not remember what amount of dividends I received after the dissolution and before the sale of my stock. I don't think I received anywhere near a thousand dollars in that year and a half. I don't know whether I received $300 or not.

Cross-examination:

When I sold my stock in the Construction Co. I received some money and some property for it. I think I received $500 in money. The property I got for it was a note of one Webb, of Vinton, secured by mortgage. The par value of the shares was $1,000 each.

Redirect examination:

I don't know when the certificate of 50 shares of stock was issued to Henry Clews. I cannot state the amount of dividends received on my 30 shares of stock between the time of the dissolution and the sale to J. W. Traer in 1876.

Second Deposition of D. W. C. Rowley.

I am the same Rowley whose deposition was taken in this case before R. H. Gilmore; don't remember the date.

(Exhibit D to J. W. Traer's deposition is examined by witness, being secretary's certificate of amount due Clews.)

I don't remember the circumstances connected with writing
146 this note. I suppose it was dated at the time of writing. I don't know when it was delivered to Mr. Traer. I don't remember the particular purpose that it was intended to serve. I don't remember any of the circumstances connected with writing that letter. My office when that letter was written was in the Union Bank Building, over the bank. On the 19th of March, 1876, my own personal office was at the Farmers' Manufacturing Co., at that time not in the Union Bank Building. I had no connection officially with the B., C. R. & M. R'y Co. at that time, and I don't know that I had any official connection with the C. R. N. W. Cons. Co. The books of account and records of the Construction Co. were not in my possession or under my control March 19th, 1876. I had no books in my possession at that time from which I could make any such statement to the trustees of the Construction Company as is contained in said Exhibit D. I don't remember of delivering that statement to Mr. Traer or to M. Howard on the 19th of March, 1876. I don't think I kept that letter from February 20th, 1875, until March 19th, 1876, and then delivered it to Mr. Traer or Howard at the request of either. I think if I had kept it a year and a month in my possession and then delivered it to Mr. Traer upon his request I should be very likely to remember such circumstance.

(Int. 46 of J. W. Traer's deposition, and answer thereto, read to witness.)

I don't think Mr. Howard obtained from me on the 19th of March, or thereabouts, any certificate as referred to in said Int. 46. I did not at that time know Mr. Howard. I don't think I had any interview with him at that time.

Int. 46. If he had come to you and requested a certificate of the account of Mr. Clews on the books of the Construction Co., would that fact have impressed itself on your mind so that you would now recollect it?

(Defendants object; that the question is argumentative, and calls for mere speculation on the part of the witness.)

A. I think it would.

Int. 17. Do you recollect delivering that letter, Exhibit D, at any time other than when it was written?

147 (Defendants object to the question as argumentative and assuming that the witness has testified that the letter was delivered when written, whereas his testimony is that he has no recollection whatever as to the writing or delivery of the so-called letter.)

A. I do not.

When the Construction Co. was dissolved the books of record and account passed into the hands of the trustees. I think I saw those books many times between the time of the dissolution and the 19th of March, 1876, in the control of Mr. Traer. I never regarded them as within my control during that time. I do not know of their being in the control of any other than Mr. Traer during that time. I was a stockholder during the most of that time, if not all, to the extent, I think, of 30 shares. I do not remember exactly when I parted with my stock. During that time I had occasion to refer to the books of record and account in the hands of Mr. Traer occasionally; I couldn't say frequently.

Int. 24. State whether during that time you acted officially as secretary in making certificates of amounts due from the Construction Co. to creditors, for the information of the trustees?

A. I remember to have rendered the trustees assistance a number of times in relation to accounts on the books. I think I made memorandums at various times for the information of the trustees. I can't say that they were in the nature of official certificates.

I have some recollection of making out a certificate of stock in favor of Henry Clews at the request of Mr. Traer. I think the same was delivered to Mr. Traer. I cannot tell when that was done. I can't remember the time of making it or the time of delivery. I did not retain the book containing the certificate of stock blank after the delivery of the other books to the trustees, any more than I retained any other book in my control. I do not remember how the book came into my hands for the purpose of making out this certificate of stock for Clews. I do not remember whether that certificate had been already made out and had remained in the book until it was handed to Mr. Traer or not.

148 I recollect very distinctly the visit of Mr. Traer to my office about March 19, 1876, and the statement he made in respect to the presence in Cedar Rapids of an attorney demanding the dividends due Henry Clews on his construction stock. The conversation that passed between Mr. Traer and myself was that the demand appeared to be legitimate and lawful if the man Howard was clothed with proper authority, and that the dividend would have to be paid. Mr. Traer's manner appeared to be considerably excited, and he asked me what he had better do. I told him, as before, he would have to pay it—meaning the trustees would have to pay it. He said that he had seen the authority that Mr. Howard was clothed with, and that it appeared to be all straight. I don't recollect anything more of importance. I don't remember the first remark Mr. Traer made. His manner was very agitated. I don't remember his using the expression that the "jig was up." The

conversation was that now we would have to do something. In that conversation he expressed surprise at the advent of that attorney. He expressed surprise that he should be here, and all his remarks indicated that he did not expect him. I had no means of knowing there was anything to the credit of the treasury except what was in the Union Bank. I do not now know what amount of credit was at the control of the treasurer there at that bank. I think Mr. Traer kept considerable Construction Co. money under his own individual name here and at Vinton in the banking house of his brother. At the time of that visit I could discover no cause of Mr. Traer's agitation, except that which might arise from a call for so large an amount of money to be paid all at once. This matter of the Clews dividend and the payment of it was frequently spoken of among the officers and responsible parties of the company. Mr. Traer was very generally present at all meetings of any importance at that time. I remember to have made the suggestion myself several times that the Clews dividends be attached by the B., C. R. & M. R'y Co. to apply on indebtedness due that company. I do not remember definitely whether Mr. Traer was present or not, but suppose he must have been, and that he was very familiar with the matter himself.

Int. 41. Had anything occurred on your part calculated to lead Mr. Traer to believe that you would personally have been
149 hostile to the transfer of the Clews interest, including the declared dividends, to himself or his wife?

A. Nothing other than the fact that Mr. Traer had agreed that if he could purchase the Clews stock it should be for the benefit of all the stockholders.

Int. 42. Examine the last resolution on page 44 of the record of the meeting held November 26, 1875, Exhibit O to J. W. Traer's depositition, and state the facts and circumstances attending its passage.

A. The credit for dividends to Henry Clews had remained on the books for a long time; he had never done anything especial in aid of the Construction Co., and it was thought by the responsible parties of the company that if any one of stockholders could purchase that interest of Mr. Clews' for the benefit of the whole stock it was a proper thing to do. Hence the resolution referred to. Mr. Traer's agreement that if he could purchase the Clews stock it should be for the benefit of all the stockholders also included the accrued dividends. The only motive in seeking the purchase of said stock was that the whole stock might enjoy the benefit of dividends already made and that might be made afterwards. By whole stock I mean all the stockholders except Clews. He wouldn't be a stockholder to enjoy any benefits after he had been bought out. It was understood then, November 26, 1875, by the leading stockholders, including myself, that Mr. Traer had already taken steps looking to the purchase of that stock and dividends.

Int. 46. When that resolution was passed we notice present Judge Greene, Dows, Traer, Wm. Greene, and Rowley. State which

of these were active in proposing and discussing the resolution referred to. (Minutes of the meeting shown witness.)

A. I cannot state who were the most active. All present took an active interest in the matter.

Int. 47. You have stated that you disposed of your stock. To whom and for what price, and when? (Page 47, record book of trustees shown witness.)

(Defendants object; that the witness has already testified fully on this question, giving the party to whom he pretends he sold
150 his stock, and full details as to what he received.)

A. I don't remember the date of the transaction. The amount was something like $1,500, I think. I don't remember whether it was to J. W. Traer or his wife.

Int. 48. Do you recollect, during the transaction of disposing of the stock, any mention of the name of Mrs. Traer?

(Defendants object, as immaterial.)

A. I do not recollect precisely about it.

Int. 49. Was the consideration for the sale of your stock in money or some other property; and, if in other property, state what that property was; if notes and a mortgage, in whose favor made?

(Defendants object, as immaterial, and that the witness has already testified as to what he received, and that the notes and mortgage referred to are the best evidence of what they contained.)

A. I received part money, and a part in a $1,000 mortgage made by one Webb, at Vinton. It was several years ago, and I don't remember to whom the notes and mortgage were made. I could hunt up the matter and state.

Int. 50. At the time of the dissolution of the company, or shortly after, do you recall the circumstance of giving notice to Mr. Traer of an indebtedness against this company and the old Cedar Valley Construction Co.; and, if so, state whether in such notice there was anything said concerning the Clews credit; and, if so, state fully all about such notice.

(Defendants object, as immaterial, incompetent, and leading; the notice itself is the best evidence.)

A. I remember after the dissolution of calling the attention of the trustees especially, and, I think, in writing, to the indebtedness of the two companies named for dividends to stockholders of said companies, with a view of having attention called to them especially. I do not know that I gave notice of the Clews dividends at any other time or way than by the notice shown me marked "Exhibit D." That last-named item of dividends to Clews' standing on the book was familiar to all the trustees.

151 Int. 51. You mention an agreement on the part of Mr. Traer to purchase the Clews interest. State whether you afterwards learned from Mr. Traer what he had done in reference to making such purchase, with what success, and what he said and when he said it.

(Defendants object, as immaterial and incompetent.)

A. I remember some time Mr. Traer stating to me that he had closed or was about to close a trade for the said stock for a definite sum. I do not remember the time and do not remember definitely the sum. I would state further that I do not remember that he gave me to understand distinctly that the negotiations were being made for the benefit of the stock of the company.

Int. 52. Did he create the impression upon your mind that he had made the purchase for himself and not for the stockholders?

(Defendants object; that it is immaterial and incompetent. The witness can only state what Traer said or the substance of it. The impression made upon his mind is not evidence, and nobody can be affected or bound by it.)

A. He did, in a very decided way. I can't repeat the words.

Int. 54. Give the substance of that conversation.

(Defendants object, as immaterial and incompetent.)

A. I cannot give the substance of the conversation further than I have already. I cannot state when this conversation was with reference to the time of the payment of the dividends March 19, 1876. At the time the dividends were paid I think I was present for a very short time at a conference of leading stockholders in the directors' office of the Union Bank. I think William Greene made a vigorous protest against the claim for interest.

Int. 58. Examine Exhibit C to J. W. Traer's deposition, particularly the back of it, and state whether the name "D. W. C. Rowley, Sec.," following the words "audited by," is in your handwriting. (Witness shown original voucher Exhibit C.)

A. I do not think it is my handwriting. I am familiar with the handwriting of John W. Traer. I think that signature is in his handwriting.

152 Int. 61. State whether, as secretary of the Construction Co., you examined, compared with the books, and then audited this voucher, including the item of $1,413.75 for interest.

(Defendants object, as immaterial.)

A. I don't think I ever saw this voucher until yesterday.

Int. 62. When and how did you first learn that the interest, $1,413.75, had been paid?

(Defendants object, as immaterial.)

A. During the next day or two. Mr. Traer went up to Vinton with Mr. Howard the same day that Mr. Howard came to Cedar Rapids. I think the next day I learned the matter had been settled. I don't think I knew at all just the amount of interest that was added to the claim till I saw this voucher.

Int. 63. When did you first learn that any interest had been allowed on the Clews dividend and paid?

(Defendants object, as immaterial, and also that the witness has already testified.)

A. I knew that interest was claimed and strenuously insisted upon, and supposed it was paid with the principal sum. I don't know that I had any precise information further than that until I saw this voucher.

Int. 64. Examine Exhibit 16 to J. W. Traer's deposition, and Exhibit B attached to answer of Alla D. Traer, and state, as near as you can recollect, what words in the said exhibit to Alla D. Traer's answer are in writing and printed, according to the form as used on the certificate of stock of the Construction Co., by directing the commissioner to underline the words in writing as he shall attach to your answer to this question copy of said Exhibit B.

(Defendants object, as immaterial, incompetent, and not the best evidence.)

A. I think Exhibit No. 16 is a true copy of the printed form of assignment on the back of said certificates, and I think the words in Exhibit B, "together with all rights and dividends declared. J. N. T.," are not in the printed form referred to.

(Witness here directs the commissioner what words to under-
153 line as not being in said printed form. The same are italicised in copy of said exhibit here set out as follows: "For value received I do hereby sell, assign, and transfer to *Alla D. Traer* — shares of the within mentioned capital stock, *together with all rights and dividends declared. J. N. T.*, and do hereby constitute and appoint —— attorney to transfer the said stock on the books of the company. *Dated March 4th*, 1876. *Henry Clews, pr. J. Nelson Tappan, trustee. In presence of R. A. Southwick.*"

Cross-examination:

The Construction Co. had no separate office of its own. They did their business and held their meetings in rooms occupied by the B., C. R. & M. R'y Co., which were in the second story of the Union Bank Building. We sometimes held meetings in the directors' room of the bank. The banking rooms were on the first floor at that time. The meeting at which it was resolved to dissolve the Construction Co. was held in one of the rooms on the second floor.

Int. 4. Was the meeting during the day time or in the evening?

(Plaintiff objects; that it is not proper cross-examination.)

A. We had meetings at various times considering the matter. I don't remember whether any of the meetings were in the evening or not. We rarely held any meetings in the evening.

Int. 5. At that meeting you were requested by a resolution to promptly write up and balance the company books, and your salary was continued for that purpose. How soon after that meeting did you do any work on the books of the company?

(Plaintiff objects, as not proper cross-examination, and immaterial.)

A. I cannot tell; I did all the work necessary without any unusual delay, as far as I can remember.

Int. 6. You said that after the dissolution you ceased to act as secretary, but furnished the trustees with memoranda and information, and aided them with reference to the books; is that all you did after the dissolution?

A. I was called upon to do various things in connection
154 with the books of the company and their affairs after the dissolution. I cannot recall all the things I did in that connection.

Int. 7. Did you not act as secretary for a long time after the dissolution, and repeatedly and habitually, as secretary, certify to the trustees the accounts on the books for settlement and payment?

A. I do not know whether such action can be called official action or not; I might have done things that could have been called official prior to Mr. Traer's becoming the purchaser or controller of much or a majority of the stock; after such time I suppose no act of mine in connection with the affairs of the company could have been called an official act.

Int. 8. Was it not your custom and practice to certify to the trustees officially, as secretary of the company, accounts standing on the books at the time of the dissolution until all such accounts were closed up; and did you not then regard yourself as authorized to act officially under the resolution at the time of the dissolution directing you to write up your books and make settlement with the trustees?

(Resolution shown witness, page 41, record book.)

A. At the time of the dissolution and immediately afterwards I was in the habit of co-operating with the trustees, whether it may be called officially or not, I do not know, in bringing to their knowledge the condition and indebtedness of the company, and to that end did certify to the trustees at various times as to the condition of the affairs of the company. I was not in the employ of the trustees after that month of February, 1875, and did not consider anything that I might do for them after that time in rendering them voluntary aid as official.

Int. 9. Did you not certify specific accounts standing on the books from time to time to the trustees for a long time after the month of February, 1875, and did you not do this officially as secretary and accountant of the Construction Co.?

(Plaintiff objects, as immaterial and irrelevant.)

A. I did not have the control of the books during this time mentioned. I did not assume to have a right to their control as an officer of the company. The trustees had the books and had
155 access to all the accounts therein, and they did not need to consult me, and any aid that I might have rendered them I never considered was rendered as secretary of the company; and in what is called certifying to indebtedness I never considered as anything more than aid rendered to the trustees in doing their own business as it ought to be done.

Int. 10. Did you not certify accounts standing on the books for a long time after the month of February, 1875?

(Plaintiff makes same objection.)

A. I can only answer by repeating what I have stated before.

Int. 11. Did you not understand that the trustees paid accounts standing on the books upon your certificate?

(Plaintiff makes same objection.)

A. I don't recollect rendering anything in the nature of certificates. It was not my duty to do so, and I do not remember to have done so during this long time mentioned; I will add further that I have no recollection that the trustees were in the habit of calling upon me for anything in the nature of a formal certificate.

Int. 12. How did you communicate to the trustees such information is regard to the books and affairs of the company as you have spoken of?

(Plaintiff makes same objection.)

A. I have no recollection that it was done in any other than in an ordinary verbal way.

Int. 13. Have you no recollection of repeatedly certifying vouchers showing the indebtedness of the company as taken from the books after the dissolution?

(Plaintiff makes same objection.)

A. I have not; I think the trustees did not depend upon me to do it, and that they acted more independently of me than such service would indicate. At the same time I may have certified to the correctness of certain vouchers in a formal way, but I do not now remember of it.

Int. 14. Look at vouchers now shown you, copies of which
156 are annexed as Exhibits 33, 34, 35, 36, and 37, and state if your signatures thereto are genuine.

(Plaintiff makes same objection.)

A. Genuine as they can be.

(Copies of same are annexed hereto as Exhibits 33, 34, 35, 36, and 37.)

Int. 15. Look at voucher, copy of which is annexed as Exhibit 38, and state what portion, if any, is in your handwriting.

(Plaintiff makes same objection.)

A. The part reading thus, "three days' board at West Union, $3.00; making deed, .75; team, $1.50 ..... $5 25

$43 10

Less previous payment by Rowley $10 00

$33 10,"

is in my handwriting; also date, "April 7, 1875," and "thirty-

three & .10," and "$33.10" is in my handwriting. This and the matters in the former vouchers shown me, I remember the trustees were not familiar with. (Copy of voucher is annexed as Exhibit 38.)

Int. 16. Look at the back of Exhibit 34 and state if the same printing appears there as on the Armstrong voucher annexed as Exhibit C to J. W. Traer's deposition. (Witness examines the two vouchers referred to. Plaintiff makes same objection.)

A. I cannot see but that it is the same. (The original voucher is attached as Exhibit 34.)

Int. 17. You stated in your first deposition that you sold your stock in the Construction Co. to J. W. Traer, and in this deposition you say you sold it to J. W. Traer or Mrs. Traer; did you ever, in fact, sell your stock to either of these partses?

A. I did, July 7, 1876, all my stock interest.

Int. 18. Are you absolutely positive that you sold your stock to either of these parties?

(Plaintiff objects, because it appears from the testimony already elicited that there was a written document describing the transaction recorded in the record of the trustees and set out as
157 an Exhibit to J. W. Traer's deposition, and the same is the best evidence.)

A. I am certain that I never have claimed any interest in the assets of the company which the 30 shares would represent, and that I never expected any benefit to come from said 30 shares of stock to myself afterwards. I do not remember any action of mine as a stockholder of the company during the time up to December, 1877, when the last action of the stockholders was had discharging the trustees. I have never considered since I sold my stock that I had any legitimate ownership in the same.

I have examined the papers, copies of which are annexed hereto as Exhibits 39 and 40, and find my signatures genuine. These papers represent the agreement made at the time. I remember there was some technical reason why Mr. Traer desired that this stock should remain in my hands for a time. The precise reason I do not now comprehend, but I considered the stock remaining in my hands was for Mrs. Traer's benefit and not mine, and I never considered that the stock remaining in my hands for a time at all impaired my complete transfer of stock interest. I never sold her anything else in the company except my stock interest that I recollect. (Copies hereto attached as Exhibits 39 and 40.)

Int. 22. Don't you observe that the assignment is not a complete transfer of your stock interest, but that you did in terms reserve an interest in the Construction Co.?

(Plaintiff objects; that the documents themselves are the best evidence, and no verbal interpretation of them is admissible.)

A. I never considered that it was anything but a complete transfer of my stock interest, and that anything in the contract to the

contrary was to serve some temporary purpose not affecting my complete transfer. I knew at the time of this assignment that there was a mechanics' lien claim pending in the Federal court in favor of the Construction Co. and against the Railway Co. involving about $100,000. I will have to add something more to my statement to set this forth. In stating that my stock interest in the Construction Co. was completely transferred I desire to state that the con-
158 tingent interest in a certain Construction Co. lien on the B., C. R. & M. R'y was reserved by contract. I think that is the same claim referred to in the assignment.

Int. 25. Are you satisfied, then, that you were mistaken in supposing that you transferred your entire stock interest to Mrs. Traer?

A. I am satisfied that at that moment of testifying this reserved contingent interest escaped me. My stock certificates have not been delivered to Mrs. Traer. They have never been called for.

My signature to this paper, copy of which is annexed to deposition of J. W. Traer, as Exhibit 23, is genuine.

(Copy of paper shown witness is hereto attached as Exhibit 41. Plaintiff objects to its introduction, as immaterial and irrelevant.)

I have examined page 51 of the book containing the secretary's record of the Construction Co., and also the trustees' record, copy of which is annexed as Exhibit 42, and my signature thereto is genuine.

(Copy of said record attached as Exhibit 42. Plaintiff objects to its introduction, as irrelevant and not proper cross-examination.)

Int. 29. Are you satisfied, from an examination of these last two exhibits, that you continued to act as a stockholder up to the final discharge of the trustees?

A. I am satisfied that I continued to act as a man remotely interested in the affairs of the company. Mr. Traer sought to hedge about his work in every way, and in procuring my signature it was a part of the remote protection that he sought. I suppose I understood what I was signing when I attached my name to these papers.

Int. 31. You still retained your stock certificates and your interest in the claim against the railway at that time, did you not?

(Plaintiff objects, because the papers already exhibited purport to contain the contracts, and any other evidence is incompetent.)

159 A. No, I did not. The stock certificates which I had were transferred to Mrs. Traer, and were left in my hands without any proxies to vote the same, for some technical reason which I do not now comprehend, and they are still in my hands. I did retain my reserved interest in the claim against the railway Co., as heretofore referred to.

Int. 32. Do you mean to say that you continued to act as a stockholder to aid Mr. Traer to hedge about his work in every way, to use your own language?

A. I do not claim that I remained a stockholder except in the contingent interest of the B., C. R. & M. R'y claim, and I only

stated that the procuring my signature to certain settlement papers and resolutions was in pursuance of a plan to fortify himself, Mr. Traer, in every way. He was extremely cautious in everything he did.

Int. 33. Why do you talk about a plan of Mr. Traer's and about his hedging about his work? When did you first come to that conclusion?

A. Because of his extreme solicitude about procuring signatures representing remote interests. I will have to ask what conclusion.

Int. 34. Do you wish to convey the idea now that Mr. Traer was so smart that he made use of you to hedge about his work in every manner and to carry out this plan which you imagine?

A. Yes; he was so smart as to attempt to use me and any of the other stockholders and officers to fortify himself in whatever he was seeking to do. This is what I believe.

Int. 35. Can you see anything improper in these papers which you signed as a stockholder? If so, won't you be kind enough to point it out and specify what it is?

(Plaintiff objects as immaterial, and an attempt to browbeat his own client.)

A. No; I see nothing improper in these papers that I signed, though I do not admit that I signed them representing a substantial stock interest.

Int. 36. Specify what other stockholders and officers of the Construction Co. Mr. Traer made use of, as you assert?

160 A. I stated that I believed he made use of other stockholders and officers, such as Judge Greene, Wm. Greene, Dr. Ely, and any others of the large stockholders and officers, to fortify himself in whatever he did, as a collection agent first, and afterwards as a trustee, and afterwards as principal owner of the stock.

Int. 37. Why do you assert that Mr. Traer was principal owner of the stock of the Construction Co.? Do you, as a witness under oath, mean to testify to anything of that kind?

(Plaintiff makes same objection as to Int. 35.)

A. I will substitute the expression, principal owner or representative of said stock.

Int. 38. Don't you think you have been a little reckless in regard to your statements about Mr. Traer, for a sworn witness?

(Plaintiff makes same objection.)

A. No.

Int. 39. Do you think it was reckless for you to assert under oath that he was the principal owner of the stock of the company?

(Plaintiff makes same objection.)

A. I do not, since he is acknowledged to be the principal owner or representative. My feelings toward Mr. Traer are not unkindly enough to affect me in giving my testimony in this case.

Int. 41. Can you tell how it happened that, in all your mistakes about the papers and records to which your attention has been

directed, you have uniformly been so mistaken as to tend to injure Mr. Traer in this suit?

(Plaintiff objects; that there is no evidence that the witness has made mistakes calculated to injure Mr. Traer, and the statement to that effect is untrue and calculated to be misleading.)

A. I do not admit at all that I made any important mistakes or errors regarding the matters referred to. If there are any variations from the thing that was strictly accurate, the same was natural and unimportant. I will bring with me at the next session of the examination the certificates assigned to Mrs. Traer of the stocks
161 referred to. I had access to the books of the Construction Co. whenever I desired, for a considerable time after they were placed in the trustees' hands. I cannot tell how long. Latterly I have had no access to them. I have not seen them for about two years, that I remember of. I was not at any time refused access to or examination of them after they passed into the hands of the trustees. They were part of the time beyond my reach, where I could not. They were locked up in a safe to which I had no access. I refer to the safe of Hubbard, Clark & Deacon; or at least at one time, when I desired access to them, I was told in that office that Mr. Traer was away and they could not be furnished to me. I do not remember when that was. I think it was before the discharge of the trustees. I cannot say definitely.

Int. 48. What did you want of them at that time?

(Plaintiff objects as immaterial.)

A. I do not remember. I wanted to refer to them about some matter or other. I cannot tell now. I think I was told they were in the safe of Hubbard, Clark & Deacon by some one belonging to the office; do not now remember who it was. The books were not at the Union Bank Building, where I had been in the habit of seeing them and consulting them. Mr. Traer had his desk in the office of Hubbard, Clark & Deacon at the time. I went there to consult the books. I was engaged with the Farmers' M'f'g Co. from January, 1876, onward; had very little to do with Construction Co. matters from that time on; had very little contact with Mr. Traer or with any of the responsible members of the Construction Co., and hence do not know when the books were removed from the vault of the Union Bank. Cannot give any data in regard to it. Do not know whether they were in the bank building up to January, 1876. I think so far back as September, 1875, they were still at the bank building. Do not know certainly.

Int. 53. Did you not refer to and examine the books with reference to the mechanics' lien claim of the Construction Co. against the railway Co. up to the time of the termination of that claim in the Federal court at Des Moines?

(Plaintiff objects as immaterial.)

A. Yes, I did. I think I never consulted the books except
162 at the Union Bank Building. Do not know whether the books had remained there, or whether they were brought there for

me to consult in preparation for the suit at Des Moines. I have reason to suppose that they may have been brought there for me to consult. I feel very well satisfied that the books had been removed from the bank building some considerable time prior to the termination of said suit at Des Moines, and that if I consulted them at the Union Bank they must have been brought there for that purpose; and yet, the time when they were taken from the bank building I have not any absolute knowledge of.

Int. 57. Have you any knowledge of the books being removed from the bank building prior to the termination of the mechanics' lien suit? If you have, give your knowledge, whether absolute or not.

A. I cannot answer the question except by employing the language in answers heretofore made.

Int. 58. When you had occasion to examine the books at the Union Bank after the appointment of the trustees, how did you get at the books?

A. I went into the vault and helped myself to them.

Int. 59. Where were the books kept by you at the time the trustees were appointed in February, 1875?

A. Prior to the vaults in the offices of the railway Co. being controlled by the receiver of said railway, Gen. E. F. Winslow, the books were kept in a vault in said offices. About that time they were removed to a vault in the bank on the first floor. I removed the books to the bank vault. I remember that W. W. Walker acted as receiver of the railway for some little time before General Winslow was appointed.

Int. 62. And you mean to confine the time of removing the books to the appointment of Gen. Winslow, and not to the prior appointment of Mr. Walker?

A. I have stated prior to Gen. Winslow's controlling said railway offices the books had remained in the vaults of said offices. It may have been so long prior as the appointment of W. W. W. Walker temporary receiver.

163 Int. 63. Are you satisfied that the books remained in the vaults of the railway until Mr. Walker was appointed re-receiver?

A. When it became apparent that the railway and the offices occupied by the company were liable to pass from the original owners and managers, the books of the Construction Co. were removed from the railway Co.'s vaults. I cannot state certainly that this apprehension was felt just before Gen. Winslow came into control, or whether it was about the time the temporary receive was appointed. It was not far from the one event or the other; of this I am satisfied. I cannot express my recollection any better than by the answers already given.

Int. 65. Who had charge of the vault of the railway office up to the time that Gen. Winslow took possession as receiver?

A. Primarily it might be said that always the railway Co. had charge of the vault, but the Construction Co. kept their books there, and the officers of the same had free access to the vault. The au-

ditor of the road and, I think, the ticket agent of the road, and myself, and perhaps some confidential clerk, had a knowledge of the set of the lock, and used it habitually.

Int. 67. Were you not continued secretary of the railway Co., and are you not secretary of that company up to the present time? I mean the B., C. R. & M. R'y Co., and not the new company which now owns the road.

A. Yes. The meeting of the stockholders of the Construction Co., at which Traer and Greene were appointed trustees, was held either in the railway Co.'s office or in some room that they were in the habit of doing business in. At the time of the meeting I think the books of the Construction Co. were kept in the vault of the railway Co.'s office. I was secretery of the railway Co. then. The railway Co., at that time, kept letter heads of its own in and about the railway office.

Int. 72. If, on the day Traer and Greene were appointed trustees, you had occasion to refer to the books of the Construction Co., where would that reference have been made?

(Plaintiff objects, as immaterial.)

A. At the most convenient and accessible place.

164 Int. 73. If you examined the books on that day and certified accounts from them, where did you do so?

(Plaintiff objects, as immaterial.)

A. I do not know. I was liable to do it on my own private desk in the railway Co. offices.

Int. 74. Do you think it at all likely that you did so outside of the office of the railway Co.?

(Plaintiff objects, as immaterial.)

A. It is not — all likely that I made such an examination in any room outside of the rooms occupied by the railway Co. Letter heads of the Union bank were not habitually kept in the railway offices at that time. Sometimes when we had meetings in the directors' room of the bank, either of the railway Co. or Construction Co., letter-heads of the said bank may have been used.

Int. 76. Have you any present recollection of having certified the account of Henry Clews to the trustees of the Construction Co. on the day that they were appointed?

A. If I did, I have now no recollection of the act, and yet I may have stated to them the balance on the books in favor of Henry Clews.

Int. 77. After the appointment of the trustees did you examine the books with some care to ascertain the indebtedness of the company standing on the books; and, if so, how soon after?

A. I think I did make such careful examination, and very soon after such appointment.

Int. 78. Have you been engaged in active business outside of the railway and construction companies since 1875, and have you had occasion to recall facts or circumstances connected with those com-

panies for a number of years; if you have not, is it not true that it is difficult to remember with distinctness or certainty in relation to them now, after having been long preoccupied with other affairs and business?

(Plaintiff objects, as argumentative.)

A. I have been engaged in business outside of the railway
165 and construction companies since 1875. I have not had very frequent occasion to recall facts and circumstances in relation to the said companies since 1875. It is difficult for me to remember exact dates and other things with perfect exactness in relation to the affairs of said companies.

Int. 79. You state in your direct examination that you do not remember the circumstances connected with writing the certificate or note attached to the voucher for the Clews dividends, and that you do not know when it was delivered to Mr. Traer. Do you think it at all likely, from your present recollection, that it was written or delivered on the day the trustees were appointed?

A. I do think it exceedingly probable, perhaps certain, that it was delivered on or about the time of writing, as I could have no motive in doing otherwise. My object in writing such a note, and in writing some other similar notes, was that the stockholders of the Construction Co. should not have a dividend out of the assets that were being collected up, without these long-standing claims being adjusted.

Int. 80. On direct examination you were asked when this note was delivered to Mr. Traer; you answered, "I don't know." You were also asked, "What did you do with that letter after you wrote it?" You answered, "I don't remember any of the circumstances connected with writing that letter." Do you still adhere to these statements? Have you any more recollection now than when you made these answers?

A. I am asked if it was at all likely that this said note was delivered at the time of writing. I answer now that it was extremely probable, and almost certain, that it was delivered at the very time of writing or thereabouts. I do substantially adhere to the former statements.

Int. 81. Have you now any recollection as to when or where you wrote that note?

(Plaintiff objects, because the witness has answered the question on direct examination, and in the last answer has adhered to his previous statement, and this is a repetition.)

A. I do not distinctly recollect where I was when I wrote the letter, nor do I remember the time of writing it.
166 I think I was present only a very short time at the conference in the directors' room of the Union Bank on the day the Clews dividends were paid, and do not remember any particular important thing, anything very much more important than the other things that transpired at that time.

Int. 83. The dividends on the Clews stock were paid March 19,

1876. Did you after that time have occasion to refer to the books of the Construction Co., and find them in the vault of the Union Bank when you so referred to them?

(Plaintiff objects, that he has already testified that he did not know where the books were during a period covered by this question, except for an examination concerning the railroad lien suit.)

A. I do not remember.

I suppose I did refer to the books frequently, or several times, at least, after that time, for the purposes connected with the lien suit against the B., C. R. & M. Ry. Co. I do not know that I found them in the bank vault every time that I referred to them. I think I did not. I think I consulted them once at Hubbard, Clark & Deacon's office. I think at some other time they came from that office into my hands for consultation. I do not remember that I took them to that office myself and left them there for use and reference in the lien case. I cannot say that I did not do so.

Int. 90. Do you remember of returning the books to the vault from the office of Hubbard, Clark & Deacon after they had been made use of in the mechanics' lien case?

A. It is now nearly four years since these doings, and I do not remember all the little, and, as I conceived, unimportant things connected with the handling of these books. I recollect taking the books to Des Moines on one occasion after the appointment at the trustees. I don't remember of ever making any application to any of the trustees for the privilege of looking at the books when I wanted to make use of them after the appointment of the trustees. I think when I could get access to them I helped myself.

Int. 93. Did you ever have any trouble in getting access
167 to them except on the one occasion you have already testified to when they were in the office of Hubbard, Clark & Deacon?

(Plaintiff objects to this and the two preceding Ints., as immaterial.)

A. I do not remember any other time. I do not say that during all the time since then I could have had access to them.

Int. 94. Do you intend to confine your last remark to the time since the trustees closed up the affairs of the company and were discharged by the stockholders in September or December 1877?

(Plaintiff makes same objection.)

A. Yes.

Int. 95. You have testified that the books were not in your custody on the 19th of March, 1876. Have you any reason to suppose that you could not have had access to them, and have examined them on that day as you did at other times, if there had been any occasion for doing so?

(Plaintiff makes same objection.)

A. Of course the books were not in my custody, but I have no

reason to think that I could not have had access to them at the date mentioned as well as at other times.

Int. 96. You say you remember no interview with Mr. Howard, the attorney, who drew the dividends at the time he was here for that purpose. Mr. Howard testifies that he did have an interview with you. Is your recollection so clear or distinct that you would contradict this statement of that witness?

A. By interview and conference referred to in former question, I understood to signify a more or less protracted going over the matter of the Clews' dividends, and with this understanding I stated that I did not have any conference with Mr. Howard. I think Mr. Howard came into my office in the morning, broached this matter of the Clews credit on the books, told me his errand, and that I immediately referred him to the trustees, and particularly to Mr. Traer, who had the matters of the Construction Co., books, etc., in his hands. He immediately went out of the office, and, as I suppose, sought Mr. Traer. I did not go into the merits of the matter or discuss it with him.

168 Int 97. What was the nature of the assets of the company at the time the trustees were appointed?

(Plaintiff objects, as not proper cross-examination.)

A. They were in subscription notes, and notes for town lots sold, and in town lots along the railroad line.

Int. 98. The towns where the lots were were all quite small, were they not?

(Plaintiff makes same objection.)

A. Yes.

Int. 99. Do you recollect that a portion of the assets consisted of taxes then in litigation, and that the aid notes in Benton county were in litigation?

(Plaintiff makes same objection.)

A. Yes, I do. Do not very distinctly remember about the notes in Benton county.

Int. 100. Were the assets very much scattered; were they of a character which admitted of being divided up among the stockholders readily or satisfactorily, or of being forced to sale without sacrifice, for the purpose of winding up the affairs of the company?

(Plaintiff makes same objection, and also that this question is original inquiry, the witness is one of the defendants, he is sought to be made a witness on the part of the defense, and this question is leading and argumentative.)

A. They were very much scattered. They were not of a character which admitted of being divided satisfactorily or of being forced to sale without sacrifice.

Int. 101. Do you recollect the fact that the aid or donation notes were in the name of the railway Co., that the taxes also stood in the name of that company, and no assignment was made of the same?

Did you know or hear of a claim being made by the receiver, Gen. Winslow, after his appointment, upon the trustees, for the notes and taxes and all moneys coming therefor.

(Plaintiff makes same objection as last above, and a part of the question seeks hearsay evidence.)

169 A. I do recollect that the notes and taxes stood in the name of the railway Co., and no assignment of the same was made, as I remember. I do not think that I was knowing to such a claim being made by Gen. Winslow; at least I do not now remember such claim. If such claim was made I suppose I knew it at the time, but do not now recall the fact.

I do not own any certificates of stock in the Construction Co., and did not look for any such certificates. I have found certificates of stock in the C. R. N. W. Cons. Co., primarily issued to me, 25 shares, and 5 shares transferred to me by John S. David, the same having been by me transferred to Mrs. Traer. I here produce them.

(The same are hereto attached as Exhibits 49, 50, 51, and 52.)

They were among my papers; did not have to hunt for them; I knew I had them.

Int. 105. In your direct examination you state that you think Mr. Traer kept considerable Construction Co. money in his own individual name here and at Vinton. Have you any personal knowledge of anything of that kind?

A. No; I have not. I sympathized with the general belief of the principal stockholders that such was the case.

(Defendants object to the last sentence as mere surmise or hearsay, and not at all responsive to the question.)

Int. 106. You testify, on your direct examination, that there was a suggestion considered that the Clews dividends be attached by the B., C. R. & M. R'y Co. to apply on indebtedness claimed to be due that company. What was the nature of that indebtedness as as you understood it?

A. For bonds and coupons unaccounted for, and incorrect accounting on the part of Henry Clews & Co.

Int. 108. You state, in your direct examination, that there was some talk with Mr. Traer about his purchasing the Clews dividends and stock for the benefit of the stockholders of the company. Was there any arrangement made as to how that should be carried out, or who should furnish the money to make the purchase?

170 A. Do not recollect of testifying that there was some talk with Mr. Traer about doing this thing. I did testify, and do now, that there was an agreement in which Mr. Traer co-operated, and a resolution in conformity with the said agreement adopted at a meeting of the Construction Co., that if any member of the Construction Co. should purchase the Clews interest in the company it should be in the interest of all the stock; don't think there was a definite arrangement made for carrying out this agreement at the time, or of furnishing the money for the same. I do not remember how many

stockholders participated in the arrangement. I am satisfied that more than half the stock was represented at that meeting. The records of the meeting at the date of the passage of the resolution which I have examined show that Geo. Greene, S. L. Dows, J. W. Traer, Wm. Greene, and D. W. C. Rowley were present. I don't know that I have any recollection of my own outside of the record as to who participated in that arrangement.

Int. 111. Was it your understanding that all of the stockholders, whether they participated in the arrangement or not, and whether they advanced or became liable for money for the purchase or not, were to participate in the benefit of the purchase?

A. I understood that the purchase was for the whole stock. I do not remember of any suggestion at the time to the contraay; do not think that there was anything said at the time about a few stockholders enjoying the benefit of said purchase, and I don't think I have ever heard such a thing mentioned since.

Int. 112. Have you always felt that you, as a stockholder, ought to have participated in the benefit of the purchase of the Clews interest?

(Plaintiff objects, as calling for the expression of the feelings of the witness, which is not testimony.)

A. Prior to the sale of my stock I felt, of course, that I was entitled to enjoy my share of any assets that the Construction Co. might have or might acquire. None worked harder or paid more money in proportion to their ability. By might acquire I mean might acquire of Henry Clews or any other person.

Int. 113. Have you had that feeling specially with refer-
171 ence to the purchase of the Clews interest?

(Plaintiff makes same objection.)

A. Not with reference to the Clews interest more than with reference to any other asset that the company might possess or acquire.

Int. 114. You say there was a special agreement with reference to the purchase of the Clews interest. Was there any such agreement with reference to the purchase of anything else while the affairs of the company were being wound up by the trustees?

A. There might have been. I do not remember anything else.

Int. 115. Now, under this special agreement with reference to the purchase of the Clews interest, have you felt and believed that you ought to have shared in the benefit of the Clews purchase? I ask for a direct answer—yes or no.

(Plaintiff makes same objection. Plaintiff's attorneys advise the witness that he can decline to answer if he desires.)

A. If the Clews stock could have been legitimately purchased I had a right to expect my share of benefit out of the purchase. I did not know prior to the bringing of this suit that there was any benefit especially to be derived to the stock from the purchase of the Clews interest. Hence I have had no feeling about the matter of sharing in any benefit.

Int. 116. State the manner pursued in settling with stockholders of the company for dividends declared upon these stocks of the company.

(Plaintiff objects, as not proper cross-examination.)

A. Dividends were paid in money after deductions were made for whatever assessments upon said stock remained unpaid.

Int. 117. Look at secretary's record of the Construction Co., pages 22 and 23, being proceedings of meetings held December 15, 1873, and January 31, 1874, respectively. Annex to your answer copies of the proceedings of said meetings. State if the dividends declared at those meetings are the same to which the owner of the Clews stock was entitled at the time the trustees were appointed.

172 (Witness also examines Construction Co. ledger, p. 178, and journal and cash-book.)

A. They are the same, less any debits charged against the same, as appears by the record.

(Copies of record pp. 22 and 23 annexed as exhibits, and 53, 54.)

Int. 118. What is the debit charged against these dividends, and by what authority did you charge it?

A. The debit is a payment to the Muscatine Western Railway Cons. Co., of which Henry Clews was a stockholder, as shown by entry on p. 247 of cash-book of Construction Co. It does not occur to me at this time what the authority was for doing so.

(Copy of said entry on cash-book hereto attached as Exhibit 55. Plaintiff objects to the question and answer, as not proper cross-examination.)

Int. 119. Do you think you made this payment to the Muscatine Western R'y Cons. Co. without authority from Clews?

(Plaintiff objects, as immaterial and not proper cross-examination.)

A. I do not remember any circumstances of payment distinctly.

Int. 120. Do you now believe that you did or would have made such payment without authority?

(Plaintiff makes same objection.)

A. No; I do not believe that I would have made such payment without authority, or at least without something that I regarded as authority.

Int. 121. You have said that the dividends were paid in cash after being declared. Do you remember that the company did not have money to pay the dividends declared December 15 and January 31, and that most of the stockholders of the company received the notes of the company for those dividends?

A. The said dividends were ultimately paid in cash. At the time, however, the dividends were declared notes were given representing said dividends. I do remember that the company did not
173 have money to cash the dividends at the time said dividends were made.

Int. 122. Were any other cash dividends declared by the Construction Co. than those of December 15, 1873, and January 31, 1874, prior to the appointment of the trustees? (Witness again consults books of the company.)

A. I do not know of any other.

Int. 123. Now look at the book shown you, and state if this is the cash-book of the Construction Co., kept by you while secretary of said company. Examine pp. 223, 225, and 227 of said book, copies of which are annexed as Exhibits 56, 57, and 58. State whether notes of the Construction Co. were given to various stockholders as shown by these pages, and if so, whether they were for the dividend declared December 15, 1873, less the debits of various stockholders, as shown by these pages. (Witness also examines secretary's record book.)

A. I have examined said book and find that it is the cash-book of said Construction Co. I believe that notes were given to various stockholders as shown by said pages. I believe that such notes were given in settlement of said dividend of December 15, 1873, to the said parties.

(Copies referred to are annexed as Exhibits 56, 57, and 58.)

The abbreviation "Div." on these pages means dividend, and refers to the entry to which it is attached; that is to say, the item or items were dividends. Probably only refers to that dividend of December 15, 1873. I don't remember what rate of interest these notes drew. I have not at present any recollection about the matter of interest. Upon examination of a note which I suppose represented a dividend of December 15, 1873, I see that it was made to draw 10 per cent. interest, and have no doubt they were all made out in the same way. I suppose the notes to non-resident stockholders for this dividend were sent by mail in the ordinary way. The names and residences of non-resident stockholders who received these notes were N. B. Squires, Burlington, Iowa; S. H. Kneeland, New York city; J. J. Warren, Mass., I believe; T. W. Barhydt, Burlington, Ia.; J. W. Barnes, Burlington, Ia.; George H. Ely, Cleveland, O.; John S. David, Burlington, Ia. These non-residents, I believe, re-
174 ceived the notes entered against them on said pages. I judge from the appearance of the cash-book that the dividend of January 31, 1874, was paid in money. I think some of the non-resident stockholders received money on this dividend and some of them received notes. The notes referred to are in some cases the notes of the B., C. R. & M. R'y Co., I think, for which the Construction Co. gave the railway Co. credit. I do not remember how the non-resident stockholders received either notes or cash, as the case might be. I have no doubt that I or some one properly authorized forwarded the said payments, yet I cannot tell how the thing was done.

Int. 132. At the time the trustees of the Construction Co. were appointed do you recollect the fact that the bank account of the Construction Co was overdrawn some $600? Look at the voucher

now shown you, being Exhibit 35 to your deposition, and state whether or not the fact is as shown by this voucher.

(Plaintiff objects as immaterial, not proper cross-examination, and the voucher is the best evidence.)

A. The bank account was overdrawn $661.31. I believe that this was the condition of the account with the bank at the time I wrote up the books immediately after the trustees were appointed, and was the condition of the book at the time of said appointment.

I did know the address of Henry Clews during the years 1873 and 1874. I did not notify him of the dividends of December 15, 1873, and January 31, 1874. The leading stockholders of the Construction Co. were also managers of the railway Co. It was believed that Henry Clews was largely indebted to the railway Co. This credit was allowed to remain standing in open account on the books with the hope, part of the time at least, that it might be made available in a settlement between the railway Co. and Henry Clews, and a part of the time because the Construction Co. was heavily burdened in building the the road and did not have funds. I do not remember when I first wrote up and balanced the account of Henry Clews on page 178 of the ledger. I haven't any recollection about it, but I probably did the work on the books immediately after the
175 trustees were appointed; probably about that time. I do not recollect how soon after the appointment of the trustees I began the work on the books, and I don't know when I finished it. There is nothing that could fix such matter in my mind.

Int. 137. Examine the accounts which you certified, as shown by Exhibits 33, 34, 35, 36, and the account which you balanced up, as shown by voucher Exhibit 38, to your deposition, and state whether you at any time wrote up or balanced these accounts on the books of the company.

(Plaintiff objects, as immaterial and not cross-examination. Witness examines ledger.)

A. The accounts referred to on the book appear to have been written up fully so far as there was anything to write up during the time in which I had any responsibility about making entries on the books or about writing up books, as it has been called. What is called "balance lines" and bringing down formal balances, I notice was not done. The condition of the account, however, was shown very plainly without this, and I suppose I did not think it necessary to strike such balance at the time.

Int. 138. Are you familiar with the form of voucher upon which Exhibits 33, 34, 35, and 36, to your deposition, are made out? How long a time did you make use of that form of voucher in the affairs of the Construction Co.? State the object of the printed blanks on the back of this form of voucher, including the blank following the words "audited by."

(Plaintiff objects, as immaterial and not cross-examination.)

A. I am familiar with the form. We always made use of this

same form, except that prior to there being any Western Division or Milwaukee Division those expressions were not printed on the form. The blanks, except the one following "audited by," were employed for a proper distribution of accounts. The blank following the expression "audited by," I think, was not habitually used on any of the vouchers. I never recollect of its having been used at all in conducting the business of the company, and I do not understand that it signifies anything on these vouchers; since it was never used on these vouchers, and that in these single cases
176 where a blank is filled up under the words "audited by," it is not done in the handwriting of the person who certified to the correctness of the vouchers on the inside.

Int. 140. You were asked in your direct examination to state whether the signature on the back of the Armstrong voucher, being Exhibit C to Traer's deposition, was in Traer's handwriting, and you answered, "I think it is in his handwriting." Did you mean by this answer to imply that this was an attempt on Traer's part to forge your signature, or anything more than a memorandum on the back of the voucher?

(Plaintiff objects; that the language of the witness is plain and explicit, and needs no explanation; also the question implies that the language referred to is narrowed down to one of two significations suggested by the defense, and the witness is given his choice of the two.)

A. At the time of answering the question referred to I did not know whether it was an attempt to imitate my signature or not. I do not think now that it was, but only intended as a memorandum. To me the name on the back of this voucher is plainly in the handwriting of Mr. Traer; very little, if any, resemblance to my signature.

During the time I was secretary of the Construction Co., and up to the appointment of the trustees, I was responsible for the keeping of the books of the company, and did some of the work. A man by the name of Pickerell worked on the books under me, and one by the name of Mills.

Int. 144. Now, will you state the substance of what was learned from the clerk of Henry Clews, referred to in former questions, at the time he was here at Cedar Rapids, and the amount of indebtedness as learned from him on the part of Clews or Clews & Co. to the railway Co.?

(Plaintiff objects: 1. Not cross-examination. 2. Immaterial and incompetent; railroad Co. not a party to this suit. 3. The witness is not asked what he learned personally, the evidence sought is hearsay. 4. As the evidence sought has no bearing on this case, its only object can be to prejudice the court against the plaintiff in a matter not in issue, and where the plaintiff can introduce no evidence to rebut.)

177 A. The substance of that learned from said clerk was that he, the clerk, had kept, under the direction of Clews & Co.,

two sets of accounts with the railway Co., one a true account and the other an untrue account, with the manifest view of overreaching the railway Co. I do not clearly remember. The aggregate was very large. I think it reached as high as $150,000 to $200,000; am not certain.

Int. 145. State if this information constituted in part the ground upon which legal proceedings were talked of or contemplated, and was one of the reasons why the Clews dividends were not paid over.

(Plaintiff objects, as immaterial; it can be of no consequence in this suit what the indebtedness of Clews was to some corporation not a party to this action, and can afford no excuse why the defendants, or either of them, should commit a fraud upon the plaintiff.)

A. Yes.

Redirect examination:

I don't know when the railway lien action was commenced. It was after the dissolution, nine to twelve months.

Int. 4. In your cross-examination you state the dissolution meeting was held in one of the rooms of the railway Co. Was not that room the one occupied by Judge Greene?

A. Judge Greene was much of the time in feeble health. We held our meetings in places most convenient for him, and probably held the meeting in what was called Judge Greene's room. He was at that time president of the Union Bank.

Int. 6. Examine Exhibit D of Traer's deposition, and state whether the letter-heads on which that was written were used by Judge Greene in his own office, just referred to, where the meeting was held, if occasion should require.

A. No; not habitually.

Int. 7. Did he not have such letter-heads in his railroad office?

A. Not commonly, I think, as he had letter-heads that
178 were called railroad letter-heads, in common use, in his room where railroad business was transacted. He might have had such letter-heads in his railroad office, and might have used the same occasionally. The fact that the note, Exhibit D, was written on a bank letter-head cannot possibly signify anything as to the time it was written, or when it was delivered to Mr. Traer. I frequently did odds and ends of writing in the directors' room of the bank, using the letter-heads that might be most convenient.

Int. 10. Could that note have been written at a time distant from its date, in your judgment?

A. I do not think it was written at a time distant from its date. I can think of no motive for doing so. I can think of a good motive for writing and delivering it immediately after the trustees were appointed.

Int. 11. You mention a call from Mr. Howard on the day he demanded the dividends. Did that interview continue long enough for you to write the note, Exhibit D, or any other written commu-

nication to the trustees, and did you make any such communication then?

A. It might have continued long enough. I know I did not write this communication at the place or time of that interview with the man Howard.

Int. 12. Referring to Exhibits 33, 34, 35, 36, and 37, state if you remember to have certified or approved any other accounts for the benefit of the trustees than these referred to in the exhibits.

A. I may have done so; I do not remember.

Int. 13. Exhibit 34 is dated September 25th. State if you remember to have certified any account later than that.

A. I cannot remember. There was nothing at the time calculated to fix my attention upon it as to time.

Int. 14. Do you remember that you did certify an account later than that?

A. No.

Int. 15. When an account is marked "audited by," fol-
179 lowed by your name officially, or other officer officially, what fact is intended to be stated in reference to the account?

(Defendants object, because the question is not intelligible.)

A. If I had made such entry myself, and signed my name officially, I should understand it to mean that I had found it correct, and that it was a proper matter for entry on the books of the company.

Int. 16. Would that also imply that you regarded the account as one proper to be paid?

A. Yes.

Int. 17. Referring to Exhibit C, noting the items thereof, particularly the item, "interest, $1,413.75," state whether, as a matter of fact, that voucher was ever audited in the sense that you have indicated, previous to its payment.

(Defendants object; the voucher shows upon its face that it was not audited by the witness.)

A. No.

Int. 18. In your cross-examination you are pointedly asked to state whether you sold your stock to Mr. J. W. Traer or Mrs. J. W. Traer, and you are in the Int. referred to a previous statement of yours in the direct examination that you sold the stock to Traer. In conversation with each other among the leading stockholders was it not your custom to speak of the stock as being bought up by Mr. Traer? State whether you used the expression, "purchased by Mr. Traer," in the same way in your direct examination.

A. Yes; it was the custom to speak of it in that way. I did use the same expression to express my understanding of the same thing in my direct examination.

Int. 19. You stated that the sale of your stock was absolute at the time of the transaction, except the reservation mentioned. State whether the methods adopted by Traer to show the sale were

not suggested by him to serve his own particular purposes, and not yours.

A. The methods of the sale and formalities were suggested by Mr. Traer, and, of course, to serve his own purpose.

180 Int. 20. Did you not regard the stock as his, but put in his wife's name for purposes of his own?

(Defendants object, as immaterial and foreign to the issues, and because the imaginings of the witness cannot change his written contract.)

A. Of course I did.

Int. 21. Refer to Exhibits 39 and 40, and Exhibits 49, 50, 51, and 52, and state further whether Mrs. Traer's name was mentioned at or about the time the said several papers were to be executed.

A. I do not remember.

Int. 22. Was Mrs. Traer present during any of the transactions for the transfer of the stock?

(Defendants object, as immaterial and foreign to the issues.)

A. She was not.

Int. 22½. Since this examination was commenced have you examined any paper or memoranda as to what property was delivered to you by J. W. Traer in exchange for your stock? And, if so, state what mortgage was delivered to you at that time.

(Defendants make same objection, and that it is not the best evidence.)

A. I received from him his own note of $350.00, I think it was, his check for about $150.00, and a mortgage made to him by one Webb and wife, at Vinton; a note for $1,000 accompanying the same, which proved afterwards to be a second mortgage.

Int. 23. Referring to your answer to Cross-Int. 34, you speak of your belief as to Traer's attempt to use you and others to fortify himself in whatever he was seeking to do. State if you knew what purposes Mr. Traer had in fixing the transfer papers as he did.

(Defendants make same objection as to Int. 20; and further, that it is simply an attempt to draw on the imagination of the witness.)

A. I think he stated to me at the time his reasons for doing so. It does not occur to me now what the reasons were.

181 Int. 24. In answer to Cross-Int. 35 you say: "I see nothing improper in these papers that I signed." State if you claim that you now understand, or did then, the full meaning and import of those papers, and what design Traer had in causing them to be so made.

(Defendants object, as immaterial and foreign to the issues.)

A. I think I understood at the time the reason of the peculiar formalities of the transaction, as set forth by the paper referred to. I do not now recall the reason for their being made just as they were.

Int. 25. Cross-Int. 39 asks if you think it was reckless for you to assert under oath that Traer was the principal owner of the stock of

the company. Do you now know which, as a matter of fact, Traer or Mrs. Traer, owns the great body of this stock?

A. I do not know who is the real owner of the stock.

Int. 26. In your answer as follows, "it is difficult for me to remember exact dates and other things with perfect exactness in relation to the affairs of said companies," would you imply that what you have stated to be facts are doubtful by reason of lack of exactness in remembering dates and details not calculated to stamp themselves upon the memory?

A. No.

Int. 27. In stating that you do not remember any of the circumstances connected with the writing of Exhibit D, do you regard the purpose of writing as one of the circumstances; in other words, is the purpose in writing it a circumstance which you have forgotten?

A. No.

Int. 28. These town lots included in the assets of the company—were they not many of them in towns which have since grown very rapidly, and were not their prospects for growth then considered good?

A. Yes.

Int. 29. Why were not those certificates delivered to Traer at the time of the transfer?

182 A. They were, I suppose.

Int. 30. If delivered, why were they retained by you?

A. To serve some purpose that I don't recall now, and do not understand.

Int. 31. As to that clerk of Clews, do you know that he was a clerk of Mr. Clews?

A. Yes; his name was Clark. His visit was some time in 1875, I think.

Int. 34. What led that clerk to make the revelations mentioned?

A. I believe his own conscience prompted it first. I think he so stated.

Int. 35. Were not those statements made under a pledge of secresy in the event that no suit was brought on account of the same?

A. Yes.

Int. 36. When you say you do not of your own recollection, outside of the record, remember as to who participated in that arrangement, referring to the plan that some of the stockholders should purchase the Clews interest for the benefit of all the stock, state whether you do not remember that there was present at the meeting the leading stockholders.

A. The leading and principal stockholders were present.

Int. 37. By the expression, "participate in the arrangement," in Cross-Int. 111, do you mean sharing in the anticipated benefits?

A. I did not use the expression, "participate in the arrangement."

Int. 38. In answer to Cross-Int. 115 you say: "I did not know, prior to the bringing of this suit, that there was any benefit to be derived to the stock from the purchase of the Clews interest." When did you learn that the Clews interest had been purchased by any one, and from whom, and how?

A. By word of mouth, and from Mr. Traer. I don't remember where or when. I don't remember what he said, except that he imparted the fact to me that he had succeeded in buying
183 the Clews stock.

Int. 40. Did he say anything about the dividends, and that he had obtained them?

A. I don't think he did.

Int. 41. Examine Exhibit 29 to Traer's deposition, copy of ledger, showing the private account of plaintiff with the Construction Co., and state whether all the writing in black ink was there when the books were delivered to the trustees. If not, state what was there at that time.

A. I can't state all that was there. On examination of the ledger I can state that the item of $2,000 debit, and the items of $10,000 and $2,500 credit, stood on the books at the time the trustees were appointed.

Int. 42. Does that show the account so that one ordinarily familiar with book-keeping could quickly ascertain what was due Mr. Clews?

A. The items named in former answer standing on the books would show to any person what was due to Henry Clews.

Int. 43. Referring to voucher and certificate Exhibits C and D of Traer's deposition, and assuming there was due Mr. Clews $10,500 on February 20th, 1875, was there due him or his estate $11,913.75 thirteen months afterwards?

A. I never figured the interest at all to see what would be due him.

I don't remember that Mr. Clews ever made any demand on the company for his dividends. If he made such demand by any communication directly to me I think I should remember it.

Int. 46. Was the secretary the officer to whom such communications would be properly directed?

A. Perhaps not. They might more properly be directed to the treasurer, but more likely still to Judge Greene in New York.

Int. 47. In the conversations and debates concerning the purchase of the Clews interest among the leading stockholders previously referred to, was it not understood that Clews was ignorant of the dividends declared in his favor?

184 A. I do not think it was so understood.

Int. 48. Why had he not then taken steps to collect them?

A. I really do not know why he did not. Probably he was deterred from doing so by a knowledge of the embarrassments of the Construction Co.

Int. 49. Did that knowledge deter other stockholders more familiar with its affairs from requesting their dividends or a note evidencing the same and bearing interest?

(Defendants object, as immaterial and foreign [to] the issues.)

A. No.

I have no knowledge that Mr. Clews was advised of the credits standing on the books in his favor.

Recross-examination:

Int. 1. Were any of the local stockholders, or any other person, accustomed to look after Mr. Clews' interest with reference to this Construction Co. stock; and, if so, who?

A. I do not know that there was any such person.

The books of the Construction Co., while I retained them, were always open to inspection during business hours by any stockholder of the company. Mr. Clews could at any time have ascertained, by inspection in person or through an agent, or by application to me, either personally or by letter, the correct condition of his account.

Int. 4. You have spoken of some of the towns in which the lots of the Construction Co. were situated as growing rapidly. Are they all small towns at the present time, notwithstanding such rapid growth?

A. Most of them are. I suppose the towns of Greene and Traer are quite large, thriving towns now. I have not been in either of them for several years.

Int. 5. Do you think that the value of the town lots belonging to the Construction Co. has appreciated since the appointment of the trustees, taking the lots altogether?

A. Probably not.

185 Redirect examination:

Int. 1. Is it not true that the depressed condition of the finances of the country generally has affected real estate, in common with other property, and have the town lots of this company suffered more than other similar real estate?

A. To the first half of the question, yes; to the last half, no.

Int. 2. Refer to Exhibit B, to answer of Alla D. Traer, the original of which is now shown you, and state, if you know, in whose handwriting the words previous to your name are written. If so, whose?

A. They were written by myself; I can't tell when; liable to have been written at the date that appears here, February 2, 1875; probably at that date.

Int. 4. By referring to the certificates which you held personally, you find no similar endorsement, except on the one issued to John S. David. Why was that endorsement made on the Clews certificate?

A. Because there was 73 per cent. paid in all, and 18 per cent. of this is expressed on the face of the certificate.

Int. 5. The David certificate says, "including the assessment for August, 1873." Was the 55 per cent. then all due?

A. Yes, I suppose it was. I do not know why the 55 per cent. endorsement was not made on the Clews certificate prior to February 2, 1875.

Int. 7. Does that indicate anything as to the date when the certificate was issued or delivered to any one?

A. I should think it indicated that at least the certificate was delivered after that time.

Don't know certainly whose handwriting appears in the name Alla D. Traer; looks like Mr. Traer's writing.

Int. 9. Is there any other writing on that exhibit written in your handwriting; and, if so, what?

A. There is nothing written on the back of said Clews certificate, except the endorsement of 55 per cent. paid, with the
186 date thereof and my signature, that is in my handwriting.

Int. 10. In the previous answer you state your belief that the words "together with all rights and dividends declared," with the initials "J. W. T." or "J. N. T.," were not in the printed form of the assignment, as might appear in the Exhibit B, attached to Mrs. Traer's answer. Now state, by examination of the original, whether the words are in the original form of assignment or written; and, if written, whether interlined. (Witness shown the original.)

A. They are not in the original printed form, and they are interlined on the back of said certificate in writing.

Int. 11. Were the certificates of stock numbered regularly throughout the stock-book? And state whether, when written up and issued, they were filled in their order, beginning with the lowest number.

A. The numbers of such certificates were printed on the certificates when the book was made, and regularly. I know nothing to the contrary, but what they were filled up and used one after the other in regular order.

Int. 12. When transferred, what was the method of transfer, after the assignment had been made and the assigned certificate exhibited to you?

A. I would take the certificate returned to me, enter the number of it and the amount, and I think the name of the party to whom it had been issued, on the back of the stub next preceding, and then would fill out the first blank certificate or certificates appearing, as the case might require, and deliver them in place of the certificate surrendered, and cancel the certificate surrendered, and write the number or numbers of certificates issued in its place on the face of the same, and file it away. The last number would indicate the number of certificates that had been issued or blanks that had been issued in all, but would not, of course, show the number of certificates outstanding. There was a printed number on the stub of every certificate corresponding, of course, with the number on the certificate. The stub was a blank on which to enter the name of the party to whom the certificate was issued and from whom
187 it was transferred, and a blank to make the date of deliver, and a blank on which to enter the number of shares. There was a blank to be filled with the date of delivery and to whom, and a blank to receive the signature of the party to whom it was delivered. I think quite generally parties receiving certificates were required to sign the receipt for same. I don't know when I last saw that stock-book. The books were all together commonly in the vault, and I suppose this certificate-book was among them. I mean by that that it was delivered to the trustees the same as the other books.

Int. 21. State whether you remember to have seen this book after

the *the* trustees received the secretary's books in general; if so, when and where?

A. I don't remember of seeing the book at any particular time or place.

Int. 22. State if you can recall any circumstance or conversation connected with the delivery of the certificate of the Clews stock to John W. Traer, as he has testified. If so, state the same fully.

A. I don't know what Mr. Traer has testified to. I don't recall with any clearness any conversation or any circumstance connected with the delivery of that certificate of the Clews stock. I do not distinctly remember the person to whom I delivered it. The receipt on the stub of the certificate book ought to show that. I think I delivered it to Mr. Traer.

Int. 24. Have you any definite recollection as to the time of the delivery of the certificate other than indicated by the date, as you have stated, February 2, 1875, on the back?

(Defendants object to the question, because the witness has not testified that the date, February 2, 1875, indicates the date of delivery. He has only testified that it probably indicates, or may indicate, the date when he made the endorsement on the certificate.)

A. I do not claim that the date indicates the time of delivery. I have no distinct recollection of the delivery.

Recross-examination:

Int. —. Examine the stock certificate now shown and you, especially the endorsement on the back showing the per cent. paid thereon, and state whether that endorsement is in your handwriting.

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A. It is. I have no distinct recollection as to when that endorsement was made, but I believe it was made at the date mentioned here as a part of the endorsement. This endorsement on this certificate does not indicate anything as to the time when the certificate was delivered.

(Certificate referred to offered in evidence, and hereto attached as Exhibit 62.)

Deposition of John F. Ely. Taken May 27, '79.

My age is 58; residence, Cedar Rapids; occupation, settling up old business matters. I am one of the original stockholders of the Cedar Rapids & Northwestern Construction Company, but cannot give the number of shares I originaliy held from memory, without reference to my books. The most that I owned at one time was eighty shares; at the time of dissolution I owned sixty. I think I was present at the time of the dissolution of said company. I cannot answer positively as to who else was present, but I think the majority of the stock was represented, if not nearly all of it.

Int. 6. State whether there was a thorough examination at or about the time of the dissolution, and if so, who made that examination as to the affairs of the company touching its assets and liabilities.

A. There was such an examination. I think there were present both the Greenes, myself, and Mr. Traer, and probably the secretary, Mr. Rowley.

Int. 7. State who seemed to be most intimately acquainted with the affairs of the company, its assets and liabilities.

A. Mr. Traer. He kept the accounts of donations and sold the property, the town lots of the company, and had charge of donation notes.

Int. 8. Was the amount of the assets and liabilities of the company ascertained and estimated about the time of the dissolu-
189 tion, and if so, what were they, approximately?

A. I don't recollect anything approximately. I know the company was regarded as solvent. There was an examination for that purpose. The assets at that time consisted of real estate, bills receivable, claims against the B., C. R. & M. Railway Company. There were no liabilities of any considerable amount that I think of. There were some on account of right of way and attorneys' fees. I don't know as anything was said in regard to the dividends of Henry Clews at the meetings. It was well known to the principal stockholders that there were dividends, but Mr. Clews' was in bankruptcy, and it was not known to whom they were to be paid.

Int. 12. Do you include Mr. Traer among the principal stockholders when you say this was talked over frequently between them?

A. Yes, sir. The books showed about $10,000 dividends due Mr. Clews at the time of the dissolution. I was appointed a trustee a few months after the dissolution in place of Wm. Greene, and continued trustee with J. W. Traer till the affairs of the company wound up. The affairs of the company were settled up about two years ago. They were wound up by the purchase of the stock by Mr. Traer. Mr. Traer told me that he had purchased all the stock. At the time of the dissolution the books of the company were placed in the hands of the trustees. I do not know where they are now. I sold my stock to Mr. Traer about two years ago, nominally at $50 per share. I find on reference to my books that I received as dividends on my stock December 28th, 1875, $4 per share; April 18th, 18th, 1876, $4 per share; and July 29th, 1876, $4 per share. That, I think, is all I received subsequent to the dissolution and prior to the sale of my stock to J. W. Traer. I received nothing for my services as trustee. Mr. Traer received a salary, I think, of $125 per month. I was not present when the Clews dividends were paid over by the trustees. I was in the State of Missouri. The money belonging to this trust, as collected, was deposited, a portion of it in the Union Bank, or Union Savings Bank, as it was then called, and J. W. Traer informed me that the rest of it was in Vinton. I was interested in reference to it, as it was a considerable sum and
190 might be called upon at any time. I suggested that some of it be deposited in different banks. I think some of it might have been put in Bever's bank.

Int. 26. Was any portion of this money paid out by your authority and direction?

A. No, sir.

Int. 27. Did you ever see any written authority from Henry Clews or his trustee to pay his dividends to any one, or did you ever know of any such authority?

A. I never did.

Int. 28. Did you authorize J. W. Traer to proceed to Vinton and pay over to one M. Howard certain moneys then collected to the credit of the said trustees?

A. I did not.

Int. —. Did you authorize the payment of the Clews dividends to any person at any time?

A. I did not. J. W. Traer informed me on my return what he had done. On my return from Missouri Mr. Traer informed me that Mr. Clews' attorney had appeared, and, in substance, that he had paid over the money. He told me that the attorney claimed interest, but he and Wm. Greene had decided not to pay interest. I told him I was glad that was settled.

Int. 31. Had that money been in the custody of the trustees from the time of the dissolution to the time of the payment?

A. I think it had. The amount I stated as being on the books was virtually in the hands of Mr. Traer. I regarded myself only as an advisory trustee.

Int. 32. Did Mr. Traer say anything to you about the certificate of stock representing the 50 shares of Mr. Clews?

A. Yes, sir. He told me he was trying to purchase it. He afterwards told me he had done so, and showed me the certificate. I don't recollect whether there was anything peculiar about the transfer of the certificate.

Int. 35. How long after the payment of these dividends did he tell you he had purchased the certificate, and of whom?

A. It was some time afterwards. I understood the pur-
191 chase was made from the assignee in bankruptcy of Henry Clews. He had told me he was negotiating with the assignee for it. J. W. Traer did not exhibit any authority for the payment of the Clews dividend. The dividend was paid before the purchase of the stock, according to my best recollection. I am under the impression that the Clews stock was purchased as other stock when he was getting all the stock into his hands. He showed me the certificate after it was done. It was some time after I came from Missouri, but I don't know how long he had then had it. The stock of the company at the time of the dissolution had no market value. It was regarded as of uncertain value dependent mainly upon the collection of the claim against the B., C. R. & M. Railway Company. That claim was a large one—about $100,000. Aside from that I estimated the value at $75 to $100 per share of $1,000.

Cross-examination:

Int. — Would you have paid $75 to $100 per share in cash for the stock at that time?

A. I was a large stockholder and had no money to invest. But I would have traded for it at that value at the time of the dissolution.

If I had had the money to invest I should have invested it in that stock at that value.

Int. 3. What did you receive as pay for the stock you sold Traer?

(Plaintiff objects, as immaterial, irrelevant, and incompetent.)

A. I received real estate, bills receivable, and notes and cash.

Int. — How much of it was cash?

(Plaintiff makes same objection.)

A. I cannot recollect without reference to my books. I am of the impression that it was about $300. It was between three and four hundred dollars. About $800 was in real estate, and the balance in notes—about $2,000 in notes. I am not clear whether I sold 60 or 70 shares. If the latter, ten shares of it belonged to my brother, and I would have received more in the aggregate. I have stated substantially all the conversation I had with Mr. Traer in reference to the payment of the Clews dividend. In the conversation at the time he showed me the Clews certificate; he told me what price he had paid for it, which he said was $30 per share. I was interested to know whether he had got the shares any cheaper than he had bought of me.

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Redirect examination:

Int. 1. What reason, if any, did Traer give for the purchase of the Clews and other stocks?

A. The assets were of such a nature that it would facilitate the settlement of the affairs by concentrating the stock.

To answer to Int. 20 I wish to add that on reference to my books I find I received $3,200 for my stock in real estate, notes, and cash.

Deposition of John F. Ely.

Int. 2. You stated in your former examination that no interest was paid on the Clews dividend, but that a demand was made and refused. State whether you have learned to the contrary, and if so, when and how.

A. I was informed that no interest was paid, but I had no personal knowledge of such fact, and think I so stated. My information in regard to the interest is mostly from Wm. Greene, and I designed in my former deposition to so state. At the time of my first deposition I had no recollection of the fact that I had signed a voucher where interest was computed and allowed. My impression, gathered from what Mr. Greene and others told me in relation to it was so strong that the fact shown by the voucher was not in my mind at the time of making the deposition. And I might say it was very probable the voucher referred to was one of a large number I signed at the same time and the interest item was overlooked. I saw the voucher but a few days since, and then the fact of interest being paid was for the first time impressed on my mind. This voucher I refer to is Exhibit C to J. W. Traer's deposition. I have no distinct recollection of having signed this voucher and having its contents brought to my attention. I have no means of knowing

when my signature was attached thereto, but am very sure it must have been so attached after the payment.

193 Int. 6. Was the question of interest being allowed on the Clews dividends as computed in said voucher over brought to your attention by Mr. Traer?

A. Not to my recollection.

Int. 7. You speak of conversation with Mr. Greene and others which left an impression no interest was allowed. To whom do you refer by the term "others?"

A. Several persons give me, upon my return from Missouri after Clews' agent was here, an account of the circumstances attending upon the payment of the Clews dividends, among them J. W. Traer, Wm. Greene, D. W. C. Rowley, Mr. Dows, and Jas. L. Bever, and my impression is that others among those named than Mr. Greene told me no interest had been paid and impressed me with that view.

(Defendants object to the last Int. and answer thereto, because immaterial and hearsay.)

Int. 8. State what, if any, peculiar circumstances you can recall served to make that impression.

(Defendants objects, as immaterial and incompetent.)

A. I don't recollect any in particular. There was a good deal of excitement apparent about it with Mr. Greene and others.

Int. 9. State, if you know, what this excitement arose out of; what was its cause?

(Defendants object as immaterial, incompetent, and calling for hearsay.)

A. I know of no other reason than a sudden demand and payment of the dividends.

Int. 10. Do you include J. W. Traer among those who seemed to be somewhat excited over the matter?

(Defendants make some objection.)

A. Yes, sir.

Int. 11. What conversation did you have with Traer touching said dividends and the disposition to be made of them prior to your going to Missouri at the time they were paid?

194 A. We had several conversations, all to the effect of the safe-keeping of the money due on the Clews dividends, as we might be called upon to pay them at any time.

Int. 12. Do I understand that the question of their payment on the demand of Clews or his trustee was frequently the subject of conversation between you and Mr. Traer from the time of your appointment as trustee until your visit to Missouri?

(Defendants object as leading and assuming matters not testified to by the witness, and because it is immaterial what the counsel understands from the testimony, even if the witness is able to swear to his understanding, of which the defendants have great doubt.)

A. I cannot say that they were frequent. The dividend account of Mr. Clews was on our books and it was owing to somebody and somebody would be likely to call for it, and the probability was it would be sudden, and while I was surprised somewhat on my return from Missouri to find they had been paid I was glad to know it; and, therefore, I had the conversation with Mr. Traer about keeping the funds so as to be able to respond when the demand was made. I cannot recollect of any particular conversation, but still I know such conversations were had.

Int. 14. When did you first learn that there were some $10,000 to the credit of Henry Clews' stock on the books of the company? State whether it was before you were appointed trustee.

(Defendants object, as immaterial.)

A. I cannot say when I first learned it. I don't recollect. I can't say positively whether or not it was before I was appointed trustee.

Int. 15. You testified in a former examination that Mr. Traer told you he had purchased the Clews stock. State how much he told you he gave for it.

(Defendants object, as immaterial and calling for hearsay.)

A. My impression is that he told me he paid $1,500 for it.

195 Cross-examination:

Int. Had there been at any time prior to the payment of the Clews dividends any opposition, to your knowledge, among the stockholders of the Construction Co., to paying over said dividends? If so, by what stockholders?

A. There was a feeling among the stockholders generally that Mr. Clews was owing the B., C. R. and M. R'y Co. a large amount, and there was some talk at one time of commencing suit and garnishing this amount. Mr. Clews being a bankrupt and so far away that neither the company nor individuals wished to incur the expense of the suit, we did not undertake it. This opposition came from the prominent stockholders.

Int. 2. What was the attitude of George Grêene in regard to paying these dividends?

A. The same as my own and other large stockholders, as expressed in my last answer.

Int. 3. Did Judge Greene at any time, to your knowledge, propose and insist upon dividing up the dividends between the other stockholders of the company; and, if so, when?

(Plaintiff objects, as improper cross-examination.)

A. He proposed that the amount due on the Clews stock should be divided. I cannot say when it was. It was not very many months prior to the payment of the Clews dividends.

Int. 4. Was it after you were acting as one of the trustees?

(Plaintiff makes same objection, and that it is immaterial and irrelevant.)

A. It was.

Int. 5. Did Judge Greene, after you were appointed and were acting as one of the trustees, strenuously and repeatedly insist that the trustees should pay over the Clews dividends?

(Plaintiff makes same objection as to Int. 4.)

A. He did not. Judge Greene's proposal was suggested by him merely, as I believe, without reflection as to the position in which the trustees would be placed.

196 Int. 6. I don't want to know what you believe. State, if you please, what Judge Greene said and what he did.

(Plaintiff makes same objection.)

A. I cannot recollect Judge Greene's language. I don't recollect that he did anything.

Int. 7. Do you know that Judge Greene made investigations upon which he found legal proceedings in opposition to the payment of these dividends to Clews or his estate?

(Plaintiff makes same objection.)

A. Judge Greene did make investigations with a view to commencing suit against the estate of Mr. Clews, but these investigations were all long prior to the proposal to divide the dividends and soon after Mr. Clews went into bankruptcy, and had no reference to these dividends as I know of. The amount was very large, amounting to several hundred thousand dollars, we believed Mr. Clews was justly owing to the railway Co.

Int. 8. Was it the design to try and reach whatever interest Clews had in the Construction Co. for the payment of the amount believed to be due from him to the railway Co.?

(Plaintiff makes same objection.)

A. I think there was no reference in particular to the dividends in these investigations that we have been speaking of, but the matter of garnishing the amount was the subject of conversation among the prominent stockholders afterwards.

Int. 9. During the investigation in regard to bringing suit against Clews was one of his confidential clerks here at Cedar Rapids; and, if so, what was learned from him as to Clews' method of keeping books, and as to how he had overreached the railway company?

(Plaintiff objects, as immaterial, irrelevant, and incompetent, not proper cross-examination; also that it assumes a state of things not shown to exist as to information obtained from the party referred to.)

A. There was one of his clerks here who made some surpris-
197 ing statements respecting the manner in which Mr. Clews had taken advantage of the company, and especially respecting the sale of the bonds. Mr. Clews was the financial agent of the company. I cannot recollect the precise terms expressed in relation to Mr. Clews' methods of accounts between himself or his firm and the company, but his intimation was to the purport that Mr. Clews kept two sets of books, one containing true accounts and the other

showing an untrue one, and from which the company accounts were made up and rendered to the railroad company.

(Plaintiff moves that this answer be struck out for the reason stated in the objection, and becauss it is hearsay and foreign to the issue.)

Int. 10. To what extent did you understand from this clerk that Mr. Clews had overreached the railway company?

(Plaintiff makes the same objection as to last Int. and Ans.)

A. No figures were ever shown me by the clerk, or made, that I recollect.

Int. 11. I ask for your understanding gathered from the clerk; was it a large or small amount, as you understand it?

(Plaintiff maks same objection, and because the witness' understanding is called for and not the facts.)

A. It was a large amount.

Int. 12. How large?

(Plaintiff makes same objection as to last Int.)

A. I did some figuring myself on that information, and believe the amount exceeded $200,000.

Int. 13. Were you treasurer of the railway company at that time?

(Plaintiff makes same objection as to Int. 9 and answer thereto.)

A. I believe I was.

Int. 14. During the time Clews was selling bonds of the railway company, and was its financial agent in New York, did you visit his office in New York; and, if so, how frequently?

(Plaintiff makes same objection.)

198 A. I did. I was there a number of times during the year prior to his failure.

Int. 15. At the time of your visits there did you see this clerk, spoken of in your foregoing answer, in Clews' office; and, if so, what was his business in that office?

(Plaintiff makes same objection.)

A. I saw him, I believe, every time I was there. I was well acquainted with him. He appeared to have the charge of the books of account between the firm of Clews & Co., and the railway company.

Int. 16. Did Mr. Clews tell you what position this clerk occupied; and, if so, what did he say?

(Plaintiff makes same objection.)

A. I do not think Mr. Clews ever stated what position this clerk occupied, but upon any inquiry respecting the bond account or accounts of the railway company, he usually went to this clerk to get the information.

Int. 17. What was the information which this clerk gave at Cedar

Rapids upon which you figured to ascertain the amount due from Clews to the railway company?

(Same objection.)

A. Mr. Clews' accounts usually showed a large balance against the railway Co. Our inquiries of him were very frequent respecting the number of bonds sold, and we were surprised that his accounts did not show greater sales than they did. We had reason to believe that the firm sold more bonds than were shown by the accounts, and that we were paying large commissions and interest upon money actually belonging to the company. During the time the firm were financial agents of the railway Co., if it were true that the firm did thus sell more bonds than represented to us, the interest and commissions I estimated might be unjustly charged to the extent of over $200,000.

(Plaintiff objects to the whole answer as irresponsive.)

Int. 18. Did this clerk inform you at Cedar Rapids that Clews had sold more of the bonds from time to time than reported to the company?

199 (Plaintiff makes same objection as to Int. 9 and answer thereto, and that defendants have made this party their witness, being entirely outside of the direct-examination, and the question is leading.)

A. That I understood as the chief point of his information.

Int. 19. And did you understand this fact to have been concealed from the railway Co. by the double set of books spoken of?

(Plaintiff makes same objection as to Int. 9 and answer thereto.)

A. I did so understand it.

Int. 20. After this information from Clew's clerk did Judge Greene, to your knowledge, at any time change his attitude in regard to the payment of the dividends on the Construction Co. stock or assent to such payment?

(Plaintiff objects, as irrelevant, impertinent, immaterial, and foreign to the issues.)

A. I don't recollect of any reference to the dividends in this investigation. I think he took the general ground that we ought not to pay them, and we all felt so, but did not see how we could get out of it without a suit.

I think it was in the month of March, 1876, that I went to Missouri. I was there a number of times, but I think the first time in March. I returned several days after the payment of the Clews dividends, but within a short time. On my return I learned that this payment had been made. I was told upon my return that it had been made. I have no recollection of ever seeing the voucher upon which the payment was made until a few days since. I have tried to call it to mind, but I can't recollect of any circumstance connected with seeing it before. I think my signature to the voucher is genuine. I think it is, without doubt. (Witness was shown voucher,

copy of which is attached to J. W. Traer's deposition as Exhibit C, and made last answer after examining said voucher.)

Int. 28. Do you see anything about this voucher now which would have led you to withhold your approval if your attention
200 had been particularly directed to it at the time you signed it?

(Witness again examines said voucher.)

A. I have stated before that I was not aware that any interest had been paid on this account. I should certainly have resisted that to the last extent. I don't think the account was entitled to it at all. In looking at this voucher and taking the circumstances into consideration, I must be mistaken in testifying in my former examination that Mr. Traer told me that no interest had been paid, and in respect to the payment of interest I may have misunderstood Mr. Greene, he referring to the rate he would not assent to. I have no distinct recollection as to the matter.

Int. 29. When were dividends declared by the Construction Co. due and payable?

(Plaintiff objects, as calling for legal conclusion, and the record is the best evidence of the facts.)

A. I believe they were usually payable soon after declared, or immediately, sometimes.

Int. 30. Were not the stockholders in all cases entitled to receive their dividends immediately upon their being declared?

(Plaintiff makes same objection.)

A. I do not recollect about that distinctly. I think not in all cases. I know I did not receive mine always. I took some notes for it.

Int. 31. Do you mean to say that you took notes from the company for dividends which you were not entitled to receive?

(Plaintiff makes same objection.)

A. No; I was entitled to receive them, or I would not have received the notes. I think I received notes for only one dividend. I think the notes were made to bear interest at 10 per cent. I think the notes I speak of were given to me for the same dividend due Clews when the trustees were appointed. My impression now is there were several notes given me at the same time, but the amount of the notes I cannot say without reference to my books.

201 Int. 34. Look at the voucher and notes now shown you and state if these notes were given you for dividends due from the Construction Co. (Witness is shown four notes with voucher attached.)

A. One of them was given me, I think, for dividends; the one that is payable to myself.

(Copies of notes and vouchers referred to annexed as Exhibits 42, 43, 44, 45 and 46.)

The other notes attached to this voucher are of different dates, and I cannot tell whether they were given for dividends.

Int. 36. On December 15, 1873, a dividend of 20 per cent. was declared on the stock of the company. Do you recollect that about the 20th of December, 1873, you received on this dividend five notes of the Construction Co. for $2,160 each, making an aggregate of $10,800?

(Plaintiff objects as immaterial, irrelevant, and not proper cross-examination.)

A. No; I do not recollect receiving such notes.

Int. 37. Do you remember receiving about December 20, 1873, for dividends due you, notes of the Construction Co. aggregating about $10,800? (Witness examines cash-book of Construction Co.)

(Plaintiff makes same objection.)

A. I cannot say without reference to my books.

Int. 38. Do you remember that you received the notes of the company for a large portion of the 20 per cent. dividends declared December 15, 1873?

(Plaintiff makes same objection.)

A. I think I did receive the greater portion in notes; I can tell by reference to my books.

Int. 39. Did the notes you received all draw interest at 10 per cent. so far as you know?

(Plaintiff makes same objection.)

A. I believe they did.

Int. 40. Do you understand that many other members of the Construction Co. also received notes for their dividends
202 drawing interest at 10 per cent.?

(Same objection.)

A. I think they did.

Int. 41. Do you know as a business man that moneys due draw interest at 6 per cent. from the time when due until paid, without any contract to that effect?

(Same objection.)

A. My understanding is that moneys due on open account draw six per cent. after six months, and that all liquidated balances draw the same rate unless by special contract.

Int. 42. If at the time the Clews dividends were paid you had been present, knowing that you had drawn 10 per cent. interest on the same dividends, and it had been shown you that other stockholders who did not receive cash also received 10 per cent., having received notes as you did, and you had also understood that, as a matter of law, interest was due at 6 per cent. on all money after the same became due, would you then have resisted the payment of 6 per cent. on the Clews dividend; and if you would, on what ground would you have done so?

(Plaintiff makes same objection, and also that it assumes a state of facts that has not been proved.)

A. When I say I would have resisted the payment I did not mean to express an opinion that I could have successfully done so, but the circumstances were such that I felt that I would have been justified in preventing the payment of either these dividends or interest in any possible legal way, knowing as I believed, that Mr. Clews justly owed a large amount to the railway Co., together with the fact that the railway Co. and the Construction Co. were largely identified. I believed, on settlement of the dividends, Mr. Clews or his assignee would be disposed to make a considerable concession rather than stand a suit. Yet on my return from Missouri, on learning that payment had been made, I was glad on the whole that it was closed up.

Int. 43. Did you intend to imply in your direct examination, or in your former deposition that any part of the Clews dividends
203 were on hand in money at the time the trustees were appointed, and was that the fact?

(Plaintiff objects, as not proper cross-examination.)

A. I did not mean to be understood that it was on hand in money. My best recollection now is that the company had very little money on hand at the time of the dissolution.

Int. 44. Do you remember the fact that the bank account of the company was overdrawn at the time the trustees were appointed? Look at the voucher now shown you, Exhibit 35 to Rowley's deposition, and state what your recollection is. (Voucher shown witness.)

(Plaintiff makes same objection.)

A. I have no personal recollection about it. The books and vouchers of the trustees show an indebtedness to the bank of $661.31. I believe that is correct.

Int. 46. In your former deposition you state that you sold your stock to Mr. Traer. Look at the papers now shown you, copies of which are attached as Exhibits 47 and 48, and state if your signatures thereto are genuine, and whether these are the contracts under which you parted with your interest in the Construction Co. so far as you sold the same, and explain your former statement that you sold your stock to Mr. Traer. (Witness shown papers and same annexed as Exhibits 47 and 48.)

(Plaintiff makes same objection.)

A. The signatures attached to the contracts as shown me are genuine. They are the contracts for the sale of my interest in the Construction Co. so far as I sold the same. My bargaining for the sale of the stock was wholly with Mr. Traer, and at the time of my former deposition I did not remember the fact that Mrs. Traer's name was in the contract.

Int. 47. Have you made any other sale of your interest in the Construction Co. than that shown by these contracts?

(Same objection.)

A. I have not.

Int. 48. Have you formally assigned or delivered your certificates of stock to Mrs. Traer?

204 (Same objection.)

A. I believe I have.

Int. 49. Are you certain about that?

(Same objection.)

A. I am not certain.

Int. 50. Do you distinguish any more clearly in your recollection between Mr. and Mrs. Traer with reference to the Clews stock than with reference to your own? You have testified that Mr. Traer told you he purchased the Clews stock. Are you any more certain that he told that he, and not Mrs. Traer, had purchased that stock than you were that he, and not Mrs. Traer, had purchased your stock?

(Same objection.)

A. I presume Mr. Traer told me that Mrs. Traer had purchased the stock. I made at the time no distinction that has been impressed on my mind.

Int. 51. You speak in your former deposition of Mr. Traer's getting all the stock of the Construction Co. into his hands. Are you aware, now that your attention is particularly called to it, that the assignments and contracts all run to Mrs. Alla D. Traer, Mr. Traer being active in making the purchase?

(Same objection.)

A. I have been fully aware that the assignments and contracts are in the name of Mrs. Traer. I used Mr. Traer's name, as I said before, as he was the one I bargained with and who wished to get control of the stock, and I did not recognize at the time any nice distinction between them.

Int. 52. In your former deposition you were asked in regard to the liability of the Construction Co. at the time of the appointment of the trustees or at its dissolution, and you said, "There were no liabilities of any considerable amount that I can think of." Have you since then refreshed your recollection by examining the books and vouchers of the trustees, and if so what do you now say as to the liabilities of the company at that time?

(Same objection.)

A. In my answer as to the liabilities I had reference to
205 those other than the stockholders. I say now that other than those to stockholders they were a small amount.

Int. 53. What do you find as to the liability to stockholders other than Clews?

(Same objection.)

A. There was quite a large amount due to stockholders for dividends. The books show $8,950 of bills payable, all of which I believe were due stockholders.

Int. 54. Besides the amounts due to stockholders for dividends,

will you approximate or make an approximate estimate of the other indebtedness of the company?

(Same objection.)

A. I do not think the other indebtedness of the company would exceed $5,000.

Int. 55. Do you recollect, aside from these amounts, a disputed and unadjusted claim of J. W. Traer for services upon which nothing was allowed or paid by the trustees?

(Same objection, and as also as immaterial.)

A. I recollect there was such claim.

Int. 56. Do you recollect that a considerable portion of the assets of the company consisted of taxes and donation notes which were in litigation the time the trustees were appointed, and that in Fayette county the trustees were unable to collect the same?

(Same objection as last.)

A. I believe there was litigation, with the result as stated.

Int. 57. Were not the assets of the company at the time very much scattered, and was it not very difficult to make any reliable estimate of these values?

(Same objection.)

A. Such was the fact.

Int. 58. Do you regard your signature to the voucher on which the Clews dividends were paid as assenting to the payment of them?

206 (Plaintiff objects as calling for a legal opinion and not a fact, and further as not cross-examination.)

A. It does seem to me my signature does give such assent.

Int. 59. Are you aware of the fact that after the appointment of the trustees, and up to the time of their final discharge, there was a suit pending in the U. S. circuit court at Des Moines, in which the trustees of the bondholders of the B., C. R. & M. R'y Co. sought to recover from the Construction Co. and certain of its stockholders a very large sum of money?

(Plaintiff objects, as immaterial and not proper cross-examination.)

A. There was such a suit against the Construction Co. instituted, as I believe, as a cross-action to the mechanics' lien suit.

Int. 60. Did you know that shortly after the appointment of the trustees Gen. Winslow, the receiver of the railway, served a notice upon Mr. Traer to turn over to him, the receiver, all books, papers, and money, in his possession relating to contributions to aid in building the road?

(Plaintiff makes same objection.)

A. I heard of something of the kind.

Int. 61. Are you aware that only about 70 per cent. of the face of the Construction Co. stock was paid in, and in case of any judgment

against the company which the assets were insufficient to pay, the holders of the stock would still be liable for the other 30 per cent.?

(Plaintiff makes same objection, and that it calls for legal opinion of witness.)

A. I have no recollection now what amount was paid in. If there was anything due upon the stock, in case of judgment, I suppose the stockholders would be liable to the extent of their subscription unpaid.

Int. 62. Taking into consideration the fact that the assets of the company were very much scattered, and that it was difficult to make any estimate of their value, and also of the litigation pending in which a large amount of money was claimed from the Con-
207 struction Co., exceeding one million of dollars, and treating it as true that the receiver had served the notice on Mr. Traer mentioned in a former Int., and also taking into consideration that the stock was not fully paid by about 30 per cent., what in your judgment was the fair cash value of the stock at the time of your transfer to Mrs. Traer? What do you think an ordinarily prudent business man would have paid for it at that time?

(Plaintiff objects, as not proper cross-examination.)

A. No business man not a member of the company would touch it.

Redirect examination:

Int. —. You speak of Clews' clerk and an interview with him; give his name and state how you know he was the clerk of Henry Clews.

A. His name was Clark; I know he was in the office of Clews and had charge of the books of our accounts. These statements of Clews' clerk to which I referred were at first strictly confidential; afterwards Judge Greene and I promised him that we should not divulge the matter unless we commenced suit against Mr. Clews. We received the first intimation of this revelation in New York. I cannot recollect the time of the year or the year; I think it was soon after Mr. Clews was declared a bankrupt. It appeared to be a matter of conscience with the clerk.

Int. 4. You state that Mr. Clews was financial agent of the company. As a matter of fact, was Henry Clews or Henry Clews & Co. its financial agent?

A. I have used the name Clews and Clews & Co. as synonymous in my deposition. Mr. Clews was the business man I dealt with. I had no talk with anybody else. Henry Clews & Co. was its financial agent. This clerk to whom I refer was the confidential clerk of both Henry Clews and Henry Clews & Co. He told me he was the confidential clerk; that is, Clark so told me.

Int. 7. Have you any other means of knowing that he occupied that position either for Henry Clews or Henry Clews & Co.?
208 A. None other that I now remember.

Int. 8. When you state your opinion that Mr. Clews had taken advantage of the railway Co., was that opinion based upon information received from this man Clark solely?

A. We were suspicious of Clews' honesty long before.

Int. 9. In your answer to Cross-int. 20, you state "I think he," referring to Judge Greene, "took the general ground that we ought not to pay them," referring to the dividends; "we all felt so, but did not see how we could get out without a suit." State to whom you refer when you say "we all felt so," and if Mr. Traer was included in that number.

A. I referred to the prominent stockholders of the Cons. Co. and R'y Co. I do not recollect distinctly whether Mr. Traer was consulted or that he expressed any opinion about it; I cannot say whether he was living here at that time; I think he was acting as general agent in the affairs of the Construction Co., and had more or less to do with the railway Co., as the two companies were largely identified.

Int. 11. Prior to the dissolution of the company when were dividends paid—before or only after demand made?

(Witness examines record book, pp. 42 and 43.)

(Defendants object, as immaterial, and that, as matter of law, the dividends were due when declared, and no practice can change the law.)

A. I believe they were paid immediately after they were declared and without demand.

Int. 12. State whether the stockholders were notified promptly of the declaration of dividends as they were declared.

(Defendant objects, as immaterial, incompetent, and calling for hearsay in this, the witness was not the secretary of the company.)

A. I do not know.

Int. 13. State whether any demand, to your knowledge, was ever made for the dividends declared by the Construction Company prior to its dissolution on the stock of Henry Clews.

209 (Defendant objects, as immaterial and foreign to the issues.)

A. Not that I know of.

Int. 14. You testify, in answer to Cross-int. 41, that your understanding is that moneys due on open account draw 6 per cent. interest after six months, and that all liquidated balances draw the same rate, unless by special contract. Do you wish to be understood that where dividends had been declared, and had not been paid on account of not being demanded, and the money with which to pay them was in the treasury of the company, the holder of the dividends could legally have demanded interest upon said dividends from the time they were declared and payable, or that you would have been warranted in paying interest on such dividends from the funds of the company?

(Defendants object, as immaterial and foreign to the issues, and also because the question is hypothetical and founded on a supposed state of facts which the evidence shows did not exist. It is shown by the evidence that there was no money in the treasury to pay the Clews dividends or the other dividends. There is not a shadow of

testimony that the money was in the treasury, as the question assumes.)

A. From information I have received from attorneys, I now believe the company was liable to pay the legal rate of interest on the Clews dividends, and that the trustees were fully justified in paying this interest. I do not wish to be understood that had I been present at the time of the payment of these dividends and interest I should have assented to the payment at that time, for the reasons I have already stated in my deposition.

Int. 15. You state, in answer to Cross-int. 50, that you presume Mr. Traer told you Mrs. Traer had purchased the stock. Do you wish to be understood as testifying to having any recollection whatever that Mr. Traer stated to you at the time of making the purchase that his wife, and not he himself, was the purchaser?

A. I knew at the time that Mr. Traer purchased the stock that Mrs. Traer was the actual purchaser. I do not recollect at the time of the purchase that he mentioned the fact that Mrs. Traer was the purchaser.

Int. 16. Did Mr. Traer, at that time or any other when he
210 was purchasing stock, assign any reason for the title to the stock being taken in his wife's name, and that she should appear as the purchaser rather than himself?

A. Not that I recollect.

Int. 17. In answer to Int. 51, you state that you bargained for the sale of the stock, and that Mr. Traer wished to get control of it. What did he state his object was in getting the control of the stock?

(Defendants object, as immaterial, incompetent, and foreign to the issues.)

A. It was in pursuance of the only plan, apparently, which could be devised to close up the affairs of the company with the least trouble and expense. The reason it became necessary that one person should become sole stockholder of the company in order to its successful winding up was, that most of the assets of the company were scattered and of uncertain value, and it seemed impracticable to make any equitable division of them among numerous stockholders.

Int. 19. Do you wish to be understood as testifying that where your name is obtained surreptitiously to a paper, the contents of which are not brought to your knowledge, you are concluded by the contents of it?

(Defendants object, as immaterial and incompetent, and that there is no evidence in the case that anybody's signature has been obtained to any paper surreptitiously—no fact is called for by the question.)

A. I have not testified to that effect, that such a signature was obtained surreptitiously. Were such the fact, however, I do not think I should be concluded.

Int. 20. Have you not testified in this and the former examina-

tion that you had no recollection of signing voucher Exhibit C, showing the payment of some $12,000, including some $1,400 of interest, and that you were surprised to learn that such voucher had been made and the interest therein called for paid over?

(Defendants object; that the question is leading, not re-examination, and that if the witness has so testified; it does not show,
211 or tend to show, that his signature was obtained surreptitiously, but only that after the lapse of years he did not remember signing one of the very large mass of papers until his attention was called to his signature.)

A. I believe I have given testimony to that effect.

Int. 21. You state in regard to the value of stock that "no man not a member of the company would touch it." Explain whether you predicate this answer upon the fact that no man not a member of the company had the requisite knowledge of the company's affairs to purchase said stock prudently, or whether it was based upon the fact that that such stock was worthless.

A. My opinion was not based upon the fact that such stock was worthless, for the reason that the members or stockholders did not consider it worthless. A good business man, in this instance, would buy more, in my opinion, from confidence in the statement of the owners of the stock than from his own judgment as to its value under all the circumstances. No instance, to my knowledge, of a sale of the stock had been made to others than stockholders, or to their immediate friends.

Int. 22. Do you still adhere to your former estimate, made in your former deposition, of the value of the Construction Co. stock? If not, explain wherein you would change it.

A. My former testimony was based upon the belief that we should recover in the lien suit instituted against the B., C. R. & M. Railway Company. Aside from that, the stock would have a much less value, in my opinion.

(The witness makes the following additions and corrections:)

Add to answer to Cross-Int. 5: His proposal was made at a time when the trustees held a considerable amount of cash in their hands to meet this account. Most of the stockholders, including the Judge, were in need of money at the time. The Clews account had been on the books a long time, and when the Judge made the proposal it seemed probable the account would still remain some time, and other funds would be realized from the assets sufficient to pay off the account when demanded.

Add to answer to Cross-Int. 17: This amount would include, also, overcharges believed to have been made on the coupon account.

212 *Deposition of William Greene.*

My name is William Greene; age, 61; residence, Cedar Rapids; occupation, formerly railroad constructing and operating, at the present time conducting smelting works and operating in mines.

Am one of the defendants herein. I have had a very slight acquaintance with Henry Clews for the last ten years. I have known J. W. Traer for twenty years and upwards. I was a stockholder in the Cedar Rapids Northwestern Construction Company from the time of its organization till I closed out my stock, about January 1st, 1876. During my connection with the company, I acted as their superintendent of construction for a large portion of the time, and I held the nominal position of treasurer a portion of the time. I think I was also a director a portion, if not all, of the time. I made an exchange of my Construction Company stock for Union Bank stock with Mrs. Traer, the negotiations for the exchange being conducted by her husband.

Int. 6. When, during such negotiations with J. W. Traer, did he first disclose to you the name of his wife as the purchaser of the stock?

(Defendants object, as immaterial and foreign to the issues.)

A. My recollection is from the very first that the proposition came in that shape; that it contemplated an exchange of Mrs. Traer's Union Bank stock for it.

Int. 7. Did you have any intercourse with Mrs. Traer personally in regard to it?

(Defendants make same objection.)

A. I do not recollect of having any conversation with Mrs. Traer in regard to it until after the purchase.

Int. 8. What was the value of that Union Bank stock at the time of the exchange?

(Defendants make same objection.)

A. I have no means of determining its cash value, as none of it had been sold for cash for a long time, and there seemed to be no cash market for it. It was estimated by its holders at from 50 to 75 per cent. of its par value. There was a large margin of difference in their judgment about that. I have examined the
213 entry, page 45 of the trustees' record of the Construction Company, dated January 3rd, 1876, and, so far as I can recollect, it is a correct statement of the transaction, and comprises all the stock I had in the Construction Company.

(Copy of said entry annexed as Exhibit 30.)

Int. 10. How many shares of the bank stock did you receive in exchange for these 55 shares of Construction Co. stock?

(Defendants make same objection.)

A. I couldn't tell the exact number from memory, but I think about 50 shares. I have no data here from which I can refresh my memory. I had no clear conception of the real value of the Construction Co. stock at that time. I thought it might be worth anywhere from $40 to $70 per share. I think I had several talks with Mr. Traer at different times, wherein the subject of the assets and liabilities of the company came up and was somewhat discussed.

These conversations extend back a number of years over the business of the Construction Co., and necessarily varied from the continuous changes that were going on in the affairs of the company. I cannot now from memory give the precise substance of any one of these conversations or the conclusions that were reached. In making my estimate of the value of the stock, information obtained from Traer about that time may have entered into my estimate to a certain extent, but I relied mainly upon information derived through other channels from my previous intimate connection with the company. At the time of the sale of my stock Mr. Traer appeared to be familiar with the assets and liabilities of the company in a general way. I cannot say that at that time I absolutely knew that there was a large credit for dividends standing in favor of Henry Clews on the books of the company, for I have no recollection of examining the books of the company, but I supposed such to be the case from my general knowledge of the business of the company. I have examined the record, pp. 43 and 44, Exhibit O to Traer's deposition, and cannot now recollect to what extent the subject of Clews' dividends was talked over at that meeting. I think it was more or less discussed. I think J. W. Traer was present at the meeting. My impressions are that he knew of the adopting of that resolution, but I cannot say positively that such was the case.

214 Int. 19. State what led to the introduction and adoption of that resolution.

A. I cannot now from memory tell just what may have transpired at that time. The matter of the Clews stock was talked over more or less by the different members of the Construction Co. previous to that meeting, and it was generally conceded by the stockholders that if the Clews stock could be purchased at a reasonable price it should be done for the benefit of the entire company. I suppose that the adoption of the resolution was the result of that kind of an understanding.

Int. 20. In such conversations among the stockholders, was it generally understood that there was about $10,000 to Clews' credit as dividends, and was it contemplated that the company would acquire these dividends by such purchase of his stock?

A. I cannot say how far this may have been the understanding with other members of the company. I knew, in a general way, that the Clews stock was entitled to a credit for dividends that I supposed at that time to aggregate about $8,000. I took it for granted, and presume other members of the company did the same, that if the Clews stock was purchased the accumulated dividends would necessarily follow the purchase.

Int. 21. In several of your answers you speak of other members of the company, or words to that effect. Do you include in such J. W. Traer?

(Defendants object, that the question is too general; counsel should point out to witness the instances when he claims Traer was present, or in regard to which he now interrogates the witness.)

A. In a general way, I do, but not specially.

Int. 22. When the affairs of the company were talked over by the members of the company, as referred to in answer to Ints. 19 and 20, was J. W. Traer present?

A. He may have been present on some of the occasions when these matters were being talked over by members of the company, but I cannot now fix any time or place when he participated in such talk. I do recollect of one occasion when Mr. Traer was
215 present when these matters were talked over, but I observed that he remained silent.

Int. 23. State when this was with reference to the meeting held November 26, 1875, Exhibit O to Traer's deposition.

A. I am not clear in my memory as to the precise time. I think it was about at the time of the meeting. It may have been during that meeting, or it may have been a short time before or after the meeting.

J. W. Traer was styled the general agent of the Construction Co., and he was a director in the company a portion, if not all, of the time. As general agent, his principal duties during the early days of the company were to work up local aid, look after the collection of the same, procure right of way for the road, and such other details as would naturally belong to the position he occupied; and such continued to be his duties up to the dissolution of the company.

Int. 26. Who had principal charge of the real estate of the company, the notes and other bills receivable given for local aid or otherwise, the taxes assessed for local aid, and, in general, the available assets of the company for the twelve months next preceding the dissolution?

A. The principal charge and general direction of such property was in the hands of the board of directors; the details pertaining to the collection or disposal of the same were generally delegated by the board to Traer, as general agent, but in some instances the superintendent and secretary were called upon to co-operate with Traer in such transactions.

Int. 27. Did these duties which were delegated to Mr. Traer necessarily make him familiar with the assets, liabilities, and affairs of the company?

A. To perform his duties successfully and satisfactorily it would seem desirable and necessary that he should be familiar with such. From my own personal knowledge I cannot say that Mr. Traer was thoroughly familiar with them.

Int. 28. Who among the officers of the company was necessarily, from the nature of his duties, most familiar with the affairs of
216 the company, including its assets and liabilities, at the time of the dissolution?

(Defendants object to the question, because: 1. It is argumentative. 2. It calls for the opinion or conclusion of the witness. 3. It calls for no specific facts aside from such opinion, but seeks merely for a sworn argument from the witness.)

A. In my opinion the officers of the company in charge of each department were more familiar with the business and interests per-

taining to their special department than any one else. I think J. W. Traer, as general agent, D. W. C. Rowley, as secretary and accountant, and Wm. Greene, as superintendent, were the three officers most familiar with the assets and liabilities of the company at the time of the dissolution.

Int. 29. Examine the records of the company at the time of the dissolution, Exhibit 3 to Traer's deposition, and particularly paragraph 4, requiring the secretary to charge the trustees with the assets of the company, and state whether said trustees took possession of the books, notes, and other assets of the company when they entered upon their duties.

A. From my own personal knowledge I cannot say how far Mr. Traer, as one of the trustees, may have received or taken possession of the books, papers, and assets belonging to the company. Personally, during the short time that I nominally acted as trustee, no part of the property or assets of the company passed through my hands, as such trustee.

Int. 30. Did you, as trustee, enter upon the active discharge of your duties at all?

A. Only so far as advisory with Mr. Traer, the co-trustee, on one or two matters to which he called my attention during the short time I held the position. Almost immediately after accepting the position of trustee my business interests assumed a shape that required me to leave the State, and for that reason I tendered my resignation, and persistently urged it until accepted by the company. Dr. Ely was my successor.

Int. 32. Do you know that Dr. Ely entered actively upon the duties of his office, except to advise with Mr. Traer and formally audit the transactions of the trustees?

(Defendants object; that the question calls for hearsay.)

217 A. I only know that Dr. Ely accepted the trust, soon after which I left the State, and was absent for several months; indeed, most of the time until I closed my stock interest in the company, from and after which time I gave no personal attention to it. Dr. Ely did not, to my knowledge, have any salary as trustee.

Int. 34. You have mentioned conversations with the members of the company in regard to the Clews interest. State whether, in any such conversation, a plan was discussed for attaching or garnishing such interest; and, if so, what plan?

(Defendants object, as immaterial, incompetent, and foreign to the issues.)

A. Soon after the news of Clews' failure reached Cedar Rapids it necessarily produced much excitement with the members and officers of the railroad and Construction Companies. There was some talk among the officers of the companies of the propriety of attaching the Clews credit on the Construction Co. books for the benefit of the railway Co., they claiming that Clews was a large debtor to them. Before any formal action was taken the Clews estate passed into the hands of an assignee. It seemed to bar any

further proceedings in that direction. I have no knowledge of any special plan being discussed or agreed upon with reference to such attachment proceedings. I suppose the parties discussing this matter referred to the credit for dividends on page 178 of ledger, Exhibit 29 to Traer's deposition, as I know of no other credit to Clews on the books of the company.

Int. 36. In answer to Int. 34 you speak of "members and officers of the R. R. and Con. Companies." Do you include in such J. W. Traer?

A. My recollection is that Mr. Traer was present during some of the talk. I cannot state from memory just how far he may have participated in them.

Int. 36. Did you, during the time of the pendency of negotiations for the Clews interest, learn that J. W. Traer was conducting such negotiations?

A. I knew of no active negotiations on the part of any one for the purchase of the Clews stock until long after its trans-
218 fer by the assignee. I have no recollection of Mr. Traer's ever expressing a desire to purchase any part of the Clews stock for his own personal interest. I have no recollection of Mr. Traer's ever expressing a desire to purchase it for any other benefit, or that it should be purchased by anybody else. My recollection is that I have heard Mr. Traer remark that the Clews interest might be purchased at a price that would be profitable to the purchaser. This is about the substance of anything emanating from him in my presence on the subject until after the announcement that the assignee had sold the stock. This conversation must have been several months previous to such announcement, as I did not know of a transfer of the Clews stock until at least six months after such transfer had been made. I was at home during the years 1875 and 1876, from the early part of November until the early part of April, most of the time. I was in Colorado during the balance of each year.

About the 19th of March, 1876, Mr. Traer called upon me in the directors' room in the Union Bank, Cedar Rapids, and announced that an attorney was here representing the Clews stock; that he came with blood in his eye; that he demanded an examination of the books and accounts of the Construction Co. and an immediate adjustment and payment of all unpaid dividends. Mr. Traer seemed somewhat excited, and asked me what he ought to do under the circumstances. I asked him if the attorney came properly authenticated, and was legally authorized to represent the stock. He said he had no doubt of it, as he held the stock certificate and other evidences showing his authority. I said to him that, in my opinion, if such was the case, the best thing he could do was to make a clean showing, and then adjust upon the best terms he could make with the attorney. After some further talk, he left to see Mr. Rowley, the secretary, and, I think, Dr. Ely, as co-trustee. Afterwards Mr. Rowley came in with Traer, and we had some general talk over the situation. Soon afterwards Mr. Traer brought in the attorney, and they, Traer, Rowley, and the attorney,

made an examination of the books. After such examination I had some talk with Traer and the attorney about the amount of the claim, the attorney insisting that they were entitled to in-
219 terest during the time the credit stood on the books of the company in favor of Clews. I protested against this, and did not know until last week that such claim had been allowed and paid. Mr. Traer seemed much troubled to raise so large an amount of money from the funds of the company on so short a notice. He stated that he would have to borrow or get an advance from the banks for a portion of it, as he did not have the full amount to the credit of his account as trustee. Finding that he could not get the advance in Cedar Rapids, he announced that he and the attorney would go to Vinton and try to secure the money there. I saw Mr. Traer the next day, and he told me he had closed the matter up and got rid of the attorney. Not having any stock interest in the company at that time, I gave no further attention to the matter, but soon after left for Colorado. I now recollect that Dr. Ely was not at home at that time, and did not participate in the adjustment. I have an impression that Mr. Belt was present during a portion of the time, but I am not positive.

Int. 45. If Mr. Belt had participated in the conference and had given his advice as the legal adviser of the company upon the legal questions that were presented, would you now be able to recall these facts?

(Defendants object; that the question is argumentative, immaterial, calls for no facts, but merely asks for the opinion of the witness as to what he might, could, would, or should remember concerning a supposititious matter.)

A. I cannot say now, as no legal question was raised or discovered that I recollect of, except the question of interest, and I have no recollection of any one participating in that in my presence, except the attorney and Traer. I do not think Mr. Belt participated actively in the adjustment, at least not in my presence. I was present myself only a portion of the time during the discussion and adjustment. I think Mr. Belt's office was not in that room. The attorney from abroad was very emphatic in his demand for the interest, and Traer seemed to favor paying the interest rather than have trouble and litigation.

Int. 48. (Counsel reads to witness answer to Int. 30, first deposition of J. F. Ely.) State whether you and Mr. Traer did decide not to pay interest.

220 A. It was not a question for me to decide, as I had no interest or position in the company at that time. I did advise Mr. Traer not to pay the interest, and my understanding of the adjustment between him and the attorney was that the interest would not be paid. Mr. Traer did not disclose to me that his wife had then any interest in the Clews dividend. He did have the appearance to me of having been taken by surprise by the attorney. Mr. Traer did not say to me that the stock had been transferred to any one. My impression from all that transpired at that time led me

to think there had been no transfer. I did not see the attorney, so as to know where he was when Mr. Traer first came into the directors' room. I think he did not tell me where the attorney was, only that he was in the city. I think it was about 9 o'clock in the morning when Traer first came—a little after 9. I think at that time he came in through the bank. As near as I can recollect now he remained at the first interview from a quarter to half an hour. This question of the Clews matter, I think, was the prominent matter that was under consideration, at least so for as Mr. Traer was concerned. I think I saw that stock certificate while the attorney was in the city.

Int. 59. Did you examine the back of it, and notice what was written there; if so, what was it?

(Defendants object; that the writing or instrument itself is the best evidence.)

A. I cannot say I made a critical examination of the certificate. It was produced by the attorney from a remark made by Mr. Traer in his presence, that I had expressed some doubt as to his authority to represent the stock. I satisfied myself that it was the Clews certificate, but cannot now recollect that I made any careful examination of anything that may have been on the back of the certificate.

Int. 60. Do you now remember that there was any written matter on the back of the certificate other than perhaps a signature?

(Defendants object; that the instrument is the best evidence, and that the witness has already testified that he made no examination and has no recollection as to what was on the back of the certificate, and that the question is leading and suggestive.)

221 A. My examination of the certificate was so slight that I have no recollection of seeing anything on the back that especially attracted my attention. It may have been assigned in blank, but I did not especially notice it; at least I cannot now recollect just what was on the back of it.

Int. 61. Examine Exhibit B to Traer's deposition, and state whether you recollect having seen that paper during either of those interviews that day; and, if so, state the circumstances.

A. At the time the attorney produced the stock certificate he presented other papers. This letter may have been one of them, but I did not at that time make so critical an examination of them as to impress it upon my mind. I do not think Mr. Armstrong's name was mentioned as the owner of the stock. Indeed, I have no clear recollection that his name was mentioned at all. I have no knowledge or recollection of any writings having passed between Mr. Rowley and the attorney. I was present only a few minutes during the time they were making their examination and discussing the Clews account. I think Mr. Dows was in during the day and had some talk about the transaction. I cannot recollect the precise time. I recollect also of having some talk with Jas. L. Bever upon the sub-

ject, probably on that day. When Mr. Traer left me on that day it was my understanding that the interest was not to be paid.

Int. 66. Was your brother, Judge Greene, a large stockholder in the company, and was it a custom of yours in his absence to look after his interest in matters with which you were familiar? And state whether your interests in this matter prompted you to examine into the whole matter as far as you did.

(Defendants object, as immaterial.)

A. Judge Greene was a stockholder in the Construction Co. The attention I gave to this matter was first caused by Mr. Traer's appealing to me; second, from my previous connection and interest in the concern; third, from a brotherly feeling of interest in the judge as a stockholder, and my friends and old associates still having stock interests in it.

Int. 67. You mention Traer's being troubled about getting
222 the money on the ground that he did not have the full amount to the credit of his account as trustee. Do you mean by that that he did not have that amount of cash in his hands as trustee, or that the trustees did not have that credit at the banks?

(Defendants object; that it is immaterial and that the understanding of the witness cuts no figure. He should be required to state what Traer said.)

A. Mr. Traer stated to me at that time that the trustees or the trustees' account did not have a sufficient amount to its credit in the banks to provide for the Clews claim. I inferred from what I knew of his method of keeping the account that all the funds belonging to the trusteeship were deposited in bank and there was not enough of this fund subject to his check as trustee to meet the demand. During my connection with the company deposits were made with the Union Bank, Cedar Rapids, and with Traer Brothers' bank, at Vinton. I presume that such was the case at the time of the adjustment. My recollection is that Mr. Traer, in my interview with him the next day, expressed satisfaction that the matter was disposed of without litigation. I cannot now recollect the precise conversation or substance of all that may have passed between us at that time. I do not recollect of his mentioning anything about the interest on that day.

Int. 71. During the time you were conversing about the Clews dividend in the directors' office state whether Mr. Traer raised any objection to paying the dividend because of a notice served on him by the receiver of the B., C. R. & M. R'y.

A. I have no recollection of his doing anything of the kind.

Int. 72. Did Mr. Traer at that interview object to paying the Clews dividend on the ground that the company was owing him $10,000 or more, that ought to be paid?

A. I have no recollection of his doing anything of the kind. I have already stated that I was present but a short portion of the time that this matter was under discussion.

Int. 73. Were you present when Mr. Traer made a claim against

the company for a percentage on collections for any amount exceeding $10,000?

223 A. I have no recollection of being present when such a claim could have been presented.

Int. 74. Examine record Exhibit 2, to Traer's deposition, and state whether anything was said at that meeting about paying Mr. Traer $10,000 or more in making collections for the company.

A. I cannot state from memory whether the question of extra compensation to Mr. Traer was discussed at that meeting or not. I have no recollection of any formal action having been taken by the board of directors on that subject at any time. I think I had some talk with Mr. Traer about his having a claim against the company for commissions on collections over and above his salary, but I have no means of knowing how far other members of the board of directors may have had their attention called to this subject.

Int. 76. Did the board as such regard this claim of Traer's as one of the liabilities of the company at the time of the dissolution?

(Defendants object, as immaterial, and because what the board regarded in no manner affects the justice or injustice of the claim.)

A. I have already answered that I have no recollection of the question ever coming formally and properly before the board of directors. I have no means of knowing what their individual opinions would have been on such a proposition.

Int. 77. How long previous to February 15, 1876, did you have this conversation with Traer about the extra compensation mentioned?

A. I can't recollect the precise time or place of such conversation. I presume I talked with Mr. Traer on that subject more than once. It may have been a few weeks and it may have been months prior to February 15, 1876. I do not think that Mr. Belt regarded himself as the regularly employed attorney of the company during the last days previous to its dissolution.

(Defendants object to the last, as incompetent, as not stating any fact, and being the conclusion of the witness as to the state of mind of a third person.)

224 Int. 79. Did Mr. Belt state to you, or in your presence, any reason why he did not so regard himself as attorney or would not so act; and, if so, what did he say?

(Defendants object, as immaterial, incompetent, and calling for hearsay and declaration of a person not a party to this suit.)

A. I have no recollection of Mr. Belt's ever saying in my presence that he would not act as attorney for the Construction Co. He did at one time complain that he was getting no regular salary, and if the Construction Company wanted his services they should either agree to pay him a salary or retain him in the particular cases that they desired his services. Mr. Belt did render some legal services to the company after such declaration. I do not know whether the company or the trustees after the dissolution retained Mr. Belt as

attorney, as I had no active connection with the company after the dissolution. I have no recollection of there being but one meeting of the company where formal action was taken regarding the dissolution. The matter was talked over informally by members of the company prior to the meeting. I have no recollection of the Clews dividend being mentioned at that meeting.

Cross-examination:

So far as I can recollect, the assets of the Construction Company at the time the trustees were appointed were made up of a fearful lot of tag-ends accumulated by the company during their business existence, consisting of some real estate, town lots, individual subscriptions, generally long past due, and some tag-ends of taxes voted by different townships; that, in a general way, covers the assets as I recollect them. I know that the Construction Co. claimed property in the towns of Traer, Dysart, Maynard, and Greene, and that the title to a portion of this property was in the railway Co., and that there was some dispute as to the ownership between the officers of the railway Co. and the Construction Co. So far as I now recollect, Traer at that time was a thriving town of some five to seven hundred inhabitants. Dysart was a much smaller town, probably not over 200 inhabitants. Maynard was a town of from two to three hundred inhabitants. Greeene was rather an active town of about 500 inhabitants; that is as near as I now recollect.

Int. 4. You have been interrogated as to the value of the Construction Co. stock at the time of your transfer of stock to Mrs. Traer. Are you aware that at that time there was a suit pending in the United States circuit court in which the trustees of the bondholders of the railway claimed a large amount from the Construction Co. and certain of its stockholders?

A. I recollect that a suit of that kind was pending at about that time.

Int. 5. Did you know that prior to that time the receiver of the railway had served a notice upon Mr. Traer, the general agent, to turn over to him all books, papers, and money in his possession relating to contributions to aid in building the road?

A. I cannot state now from memory at just what time I heard of such notice. I did hear of it, but I think it was some months after the notice had been served. I was absent from the State a large portion of each year from 1874 up to the present time.

Int. 6. Do you know that at the time you sold your stock only about 70 per cent. had been paid in on the stock of the company, and that in case of a judgment against the company which the assets were insufficient to pay, the stockholders still remained liable to the extent of the other 30 per cent.?

(Plaintiff objects, as argumentative and calling for legal conclusion and not the fact; immaterial and irrelevant.)

A. I know that at the time I sold my stock it was not full paid. I cannot now recollect just the amount paid upon it, but I think it was about 70 per cent. I took it for granted that stockholders could

be held by judgment creditors for the unpaid portion of their stock, provided the company had no other assets to meet the same.

Int. 7. Now, taking into consideration the fearful lot of tag-ends of which the assets consisted as described by you, the litigation then pending in which more than a million dollars was claimed, and treating it as true that the notice of the receiver as above mentioned was served before you sold your stock, and also taking into
226 consideration that the stock was not full paid, what in your judgment was the fair cash value of the stock at the time of your transfer to Mrs. Traer? What do you think any ordinarily prudent business man outside of the company would have paid for it at that time?

A. I do not think that any one not familiar with the details and real situation of the company would pay anything for the stock. I have no recollection of any transactions in the stock by parties not directly connected with the company, with the exception of that portion purchased by Mrs. Traer, and she had the benefit of the knowledge of Mr. Traer, an active member of the company. The bank stock which Mrs. Traer traded for my stock stood in the name of Mrs. Traer, and was transferred by her to me at the time of the trade. I have known Mrs. Traer for some 24 or 25 years. During my first acquaintance she had the reputation of having an estate of her own that was afterwards somewhat increased from the estate of deceased relatives. I have known of her having independent business transactions separate and distinct from her husband, from my first acquaintance down to the present time.

I cannot now tell from memory just what adjustments were made with Mr. Traer for his services as general agent prior to April 1, 1874. My recollection is that he was to receive a certain per cent. of the amount of collections from local aid, etc., in compensation for his services, and that adjustments were made from time to time on the reports of his collections. I think the larger part of Mr. Traer's active services for the Construction Co. were performed before April 1, 1874.

Int. 12. Examine the report of Mr. Traer April 1, 1874, recorded in secretary's record, and the meetings of the board relative to the report, and state if you find anything indicating that Mr. Traer received anything for his services in that settlement.

A. I see nothing here that would show any payment to Mr. Traer for services, or any claim for the same. The books now shown me purport to be and are the ledger, journal, and cash-book of the Construction Co. On a casual examination of the books presented I find but three accounts wherein Traer is interested. One is
227 his stock account, which appears to be balanced, and throws no light upon the question of services. The next is John W. Traer, general agent, wherein Traer is credited and the railway Co. charged with $625, as follows: Paid Traer for services as general agent March 16, 1871, for two months at $125 per month, $250, and on May 31, three months' services at the rate of $125 per month, $375. Then his private account, on page 187 of the ledger, which is simply a debit and credit of certain dividends. My recollection

now is that Mr. Traer was to receive compensation for his services at the rate of $125 per month; that his services were somewhat divided as between the railroad and Construction companies, and that vouchers for such services were made up and paid by the railway Co., with the exception of the five months, as shown on his account as general agent on the Construction Co. books here referred to. I do not find any other entries on said books indicating payment by the Construction Co. to Traer, as general agent, for his services prior to April 1, 1874.

Int. 15. In view of what the books show, is your recollection such that you would say, against the positive testimony of Mr. Traer, that he did receive other compensation from the Construction Company prior to April 1, 1874?

(Plaintiff objects, that there is no testimony upon which to found the hypothesis, and it is not cross-examination.)

A. Since refreshing my memory from an examination of the books I find I was mistaken in my impressions when I stated that he was to receive a certain per cent. of collections from local aid, etc. (See answer to Cross-Int. 10.) The per cent. on collections to be paid Mr. Traer applied to collections made for the Cedar Valley Railroad Construction Company, and not to collections for the C. R. N. W. Construction Company. I do not now know of any compensation paid Mr. Traer for his services as general agent prior to April 1, 1874, except the $125 per month paid him through the railway company. So far as I can judge from the entries on the book and my knowledge of the transaction, the $625 charged Traer, general agent, on salary account, was afterwards paid the Construction Company by the railway company.

During my examination, in addition to the ledger, journal, and cash-book of the C. R. N. W. Construction Company, to
228 which I have already referred, I have seen and examined the record of the secretary of said Construction Co., which also contains the record of the trustees; also, a book of assets of said company, which seems to contain a list of all real estate, bills receivable, and other assets belonging to the Construction Company; also, an account-book, styled "trustees' ledger." I believe that is all that I have seen. My attention has just been called to a cash-book of the trustees which contains the original entries carried to the ledger.

Int. 18. Were you present at the meetings of the board of January 31, 1874; October 15, 1873, and June 30, 1874, at which meetings some reference was had to the report of the general agent on local aid and collections therefrom, and do you recollect the fact of such report being made to the board?

A. I recollect that I was present at about all the meetings of the board of directors during the time stated in the Int. Mr. Traer did report, at the request of the directors, as general agent, and furnished a list of the property and assets still in the hands of the company; also a list of collections made by him, as general agent. I recollect of having some talk with Mr. Traer and other members

of the Construction Company about Traer's claim for additional compensation. The matter may have been and probably was discussed in some one or more meetings of the board, but the general expression of the members was opposed to recognizing or allowing any such claim. I think now Mr. Traer did present a bill and urged that it be placed on file, but it was refused. Whether this was done at some formal meeting of the board or simply at a conference of some of the members of the board, I cannot now state from memory.

Int. 20. The construction contract between the railway and Construction companies is in evidence as an exhibit to J. W. Traer's deposition, and shows that the Construction Company undertook to procure the right of way and depot grounds for all road built by it. How many miles of railroad did the Construction Company build under this contract, and who procured the right of way for such road?

A. I cannot answer precisely from memory as to distance, but I think there was about 200 miles of road constructed, includ-
229 ing side tracks. There was probably in the neighborhood of 190 miles of right of way secured by the Construction Company through its agents, Mr. Traer, as general agent, being the most active man in this department. The principal assistance rendered him was by myself, as superintendent of construction, in some of the most difficult cases.

Prior to February, 1876, I do know that nearly all the members of the Construction Company took the position that the Clews dividends ought not to be paid, for the reasons that he had so signally failed in carrying out his promises with the railway and Construction companies, that they had lost very largely, and for the further reason that all of the other members of the Construction Company being in the West and on the line of the work, had been called upon to render services, advance money, and loan their personal credit to the company, in which Mr. Clews did not in any way participate. I have no means of knowing whether the secretary of the company, prior to the dissolution, did or did not notify Clews of any dividends standing to his credit. The secretary knew of the opposition to paying Clews, and I think participated in it. My impressions are that from this fact, and the further fact that the Clews stock was liable to still further assessments, and the fact that Clews had been somewhat slow and reluctant to pay previous assessments, the secretary may have neglected or deferred notifying Clews of his dividend credits. I do not know of any money being on hand or retained continuously to provide for the Clews dividend. I do know that during the active construction of the road, and for some time after, the Construction Company was habitually hard up and short of money to provide for their current payments. I do not recollect of any money being turned over to the trustees at the time of their appointment, and my impressions are that there was no money on hand belonging to the Construction Company to turn over.

So far as I have any knowledge, Mr. Belt continued to act as the legal adviser of the company when called upon by its officers up to

the time of its dissolution. I have no personal knowledge whether he did or not continue to act as the general legal adviser of the trustees in matters relating to the company's interests after the
230 dissolution. During the short time that I acted as co-trustee, had any question come up wherein we required legal advice, I should have unhesitatingly called upon Mr. Belt for it. I cannot now recollect whether the trustees did have occasion to call for such advice during my short administration or not. At the time the Clews dividends were paid my impressions are that all the books of the Construction Company were kept in the Union Bank Building, the important part of them probably in the vault of the bank. I cannot state from my own knowledge just where Mr. Rowley may have done the most of his work on the books about the time of and after the dissolution. I saw but very little of Mr. Rowley or the books just prior to the dissolution, and was absent from the State for several months soon afterwards. So far as I know, the directors' room of the Union Bank was the only place where the books and papers of the Construction Company were examined by Mr. Rowley or any other member of the company.

Int. 31. Were these books and papers subject to inspection of the members of the company, including Henry Clews and his trustee, J. Nelson Tappan, or parties representing them, if they had sought such inspection?

A. I take it for granted they were; I never heard an intimation from the secretary and general accountant, or from any member or officer of the company, that the books and papers were not always subject to the inspection of any party entitled to or interested in such inspection.

Int. 32. After the trustees were appointed was it still Mr. Rowley's duty to write up the books of account and certify unbalanced accounts of the trustees?

A. I take it for granted that such was the case, and have no knowledge of any different order or instructions to him. My recollection is that the failure of Henry Clews was in the fall of 1873.

Int. 34. You have spoken of talk at that time among the officers of the companies of the propriety of garnishing the Clews dividends at the suit of the railway company. What officers, if any, were active in this matter of discussion?

A. I recollect that Judge Greene, president of the road,
231 prior to his being prostrated by illness, was quite earnest in his declarations that the railway company should take some steps to protect themselves by securing or holding the Clews dividends. Mr. Broeksmit, the auditor of the road, J. F. Ely, S. L. Dows, and others all expressed the same opinion. I have no doubt, had it not been for the illness of Judge Greene, the president of the road, that active measures would have been taken to have secured to the railway company the dividend credits on the books of the Construction Company.

I have stated that I only made a casual examination of the Clews certificate at the time I saw it in the directors' room of the Union Bank, when the question of payment of dividends was under dis-

cussion, to satisfy myself that it was the Clews certificate. My attention was not called, so far as I can now recollect, to anything upon the back of it. I may have, and presume I did, glance at the back of the certificate; but saw nothing upon it that particularly attracted my attention.

Int. 36. You have been asked if you knew of the negotiations for the purchase of the Clews stock, or of its transfer at the time. Did you know of the many other negotiations of Mrs. Traer or others for stock of the Construction Co. and of the other transfers at the time they were made?

A. I only knew of a very limited number of transactions in Construction Co. stock. They were confined to purchases made for Mrs. Traer by J. W. Traer, her husband. I cannot say at just what time I may have heard of these few negotiations between Mr. Traer and others, but presume I did not hear of them until some time after they were made.

I could not from memory state positively where Mr. Belt's office was at the time of the payment of the Clews dividends. He was occupying a room on the third floor of the Union Bank Building up to about that time. He changed his location either a short time before or after; I can't state the time precisely. Prior to 1874 and up to the time the road passed into the hands of a receiver the meetings of the directors or stockholders were usually held in the railway Co.'s president's and directors' room, on the second floor
232 of the Union Bank Block. After the road passed into the hands of a receiver I think they were uniformly held in the Union Bank's directors' room. After I sold my stock I gave no especial attention to the affairs of the company. I was occasionally called upon by Mr. Traer and other members of the company for my opinion or advice in regard to matters pertaining to the company.

Int. 40. You stated in direct examination the reasons which induced the attention on your part, so far as you gave it, to the matter of paying the Clews dividend. Do you mean by this that you pain special attention to that matter or specially acted in relation to it?

A. I do not, and have not so testified, as I understand it. I did not assume or intend to assume any responsibility further than giving my personal advice or opinion to Traer as to what he should do in the premises, excepting with the question of interest, which was discussed with the attorney, in which I did say that I felt warranted in saying that the other stockholders would not submit to such an outrage, or words to that effect.

Int. 41. The litigation between the Construction Co. and railway Co., in which the former claimed a mechanics' lien for $90,000, and the trustees of the bondholders of the latter sought to recover a large amount from the Construction Co. and certain of its stockholders, has been referred to. Do you know when and upon what basis this litigation was compromised?

A. I know of the compromise of these suits, but I cannot from memory locate the exact time. My recollection of the compromise

is that it was a closing up of all controversies between the reorganized railway Co. and the Construction Co., the railway Co. agreeing to pay a certain amount of R. R. stock and bonds towards providing payment on certain notes of the old railway Co. endorsed by members of the Construction Co. I think the net proceeds of the securities furnished by the railway Co. amounted to about $20,000. I have no knowledge of the trustees or the Construction Co. receiving any direct benefit from this settlement. The proceeds of the stock and bonds referred to were applied directly to the payment of the paper of the old R'y Co. endorsed by Geo. Greene,
233 J. F. Ely, S. L. Dows, D. W. C. Rowley, and Wm. Greene. The officers and stockholders of the Construction and railway companies were largely the same from the organization of the Construction Co. up to 1875.

Redirect examination:

Int. [1.] In reference to the $625 payment to Mr. Traer, to which you have testified, this, as I understand, was paid to him, as general agent, for his services. What salary was paid directors of the Construction Co., and how was it paid?

A. I know of no salary or compensation having been paid to the directors of the Construction Co. for their services as such directors.

Int. 2. You have referred to the books of the company, as well as of the trustees. Examine and state what has been paid J. W. Traer on account of the claim for $10,000 percentage.

A. From a casual examination of the books and from my general knowledge of the business I am well satisfied that Mr. Traer has not been paid any part of his claim for percentage on collection by the Construction Co.

Int. 3. On page 50 of record-book of trustees, Exhibit 19 to Traer's deposition, I find an entry: "Claim of J. W. Traer rejected by board of directors, $10,544.19." I desire to call your attention to this as to the time when the claim was made and rejected, if at all.

A. I have fully answered the foregoing Int. in my direct and cross examination.

Int. 4. Was the bank directors' room also used by Mr. Traer, as trustee, or did he have another office beside this?

A. So far as I know, Mr. Traer transacted his business as trustee when in Cedar Rapids in the Union Bank Building. I think he did a portion of his writing and figuring at his residence. I don't know of his having any other office or place for transacting Construction Co. business except in the bank building.

Int. 5. You mention Judge Greene, Mr. Broeksmit, John F. Ely, S. L. Dows, and others as advising a garnishment of the
234 Clews dividends on a claim of the B., C. R. & M. R'y Co. Who besides these were active in advising this measure?

A. I did not intend to be understood as saying that Judge Greene or any other member of the companies was active in advising a garnishment or any other specific process to save the claim. They were active in suggesting that some steps be taken by which the railway Co. should protect themselves to that extent. The other

parties referred to were J. L. Bever and myself as being the most prominent. I think other small stockholders also expressed a similar opinion in my presence. All seemed to rely on Judge Greene to take the necessary steps, and his illness prevented.

Int. 6. Examine the ledger and cash-book of the trustees and state what appears therein as having been paid to A. S. Belt, as attorney for the trustees of the company.

A. Nothing appears on these books of the trustees.

Deposition of George Greene.

My age is 62 years; residence, Cedar Rapids; occupation, lawyer. I am acquainted with Henry Clews, J. W. Traer, Alla D. Traer, Wm. Greene, John F. Ely, and D. W. C. Rowley. Have known them all from 11 to 20 years, perhaps Mr. Clews a shorter time than the others. Have known him about 11 years. Have known Mr. Traer about 18 or 20 years, and Mrs. Traer a shorter time, some. I was a stockholder in the C. R. N. W. Cons. Co. I owned considerable stock, but held no office in the company that I am aware of at any time. I held 135 shares for a long time. I believe the list of stockholders February 20, 1875, on page 35 of secretary's record, to be correct.

(Copy of same annexed as Exhibit 63.)

February 20, 1875, to the best of my recollection, there was a final vote adopting the report of the committee which had been appointed November 21, 1874, to propose a plan for closing up the affairs of the company. I do not know who were present at that meeting.

235 I was present at two or three meetings where the report of the committee to devise a plan for winding up the affairs of the company was discussed, and I think I was present at the time the report was submitted, February 15, 1875.

Int. 7. State what were the liabilities of the Construction Co. at that time and in what they principally consisted.

(Defendants object; that the records are in evidence showing what the liabilities were, and are in no manner assailed or impeached. It is neither fair to the defendants or to the witness to attempt any other or different showing from mere recollection after the lapse of so many years.)

A. I do not remember. I think they were light, and mainly due to the Union Bank.

I do not remember how long a session was held the day of the dissolution. According to my recollection the only matters discussed were the condition of the company, the fact that its contracts with the railway Co. had been performed, that there was no longer any necessity for continuing the expense and trouble of an organization, and the fact that the affairs of the company could be more expeditiously and economically closed up by one or two persons than by the corporation. I do not remember that the Clews dividend question came before us at that time; that all dividends had been

adjusted; but the receipts of the company previous to that time had been used mainly in the payment of indebtedness, with the exception of stock and bond dividends which had been regularly made among all of the stockholders, including Henry Clews. I think the dividend question in regard to Henry Clews arose afterwards. I think I knew of all dividends declared either at the time they were declared or soon after. According to my recollection, all or nearly all of the dividends declared prior to the dissolution were met by assessments on the stock. I cannot particularly call to mind the two dividends referred to of 20 per cent. December 15, 1873, and 5 per cent. January 31, 1874. My information in regard to Henry Clews was to the effect that all dividends to which he was entitled were adjusted with him up to the date of his going into bankruptcy.

Int. 10. Examine pp. 43 and 44, secretary's record, Exhibit O to Traer's deposition, wherein it appears that Geo. Greene, S.
236 L. Dows, J. W. Traer, Wm. Greene, and D. W. C. Rowley were present and a resolution was offered that whoever should purchase the Clews interest should purchase it in behalf of the stockholders. Give your recollection of what transpired touching that resolution; who, if any one, was designated to make the purchase, or the manner of purchasing.

(Defendants object; that the resolution shows upon its face that no one was designated to make such purchase.)

A. I think about that time Mr. Traer had proposed to buy stock from different stockholders of the Construction Company, and, among the rest, the stock of Henry Clews had been spoken of as being likely for sale. No one was designated, according to my recollection, to purchase the stock. Mr. Traer had offered to trade for stock, but I do not think any party had accepted any offer made by him up to that date; I do not wish to be understood as implying that the matter was left entirely with the trustees. I think one stockholder had as good a right to negotiate for the purchase of the Clews stock as another.

Int. 12. Your attention is called to the testimony of J. W. Traer, Int. 115. After referring to the purchase by his wife he says: "It was finally agreed, to avoid litigation with the contentious stockholders here, to have it placed in the hands of an attorney non-resident." Your attention is also called to Int. 158 and answer. (Same read to witness.) State what contentious position you had taken to the payment of this dividend and why, and what reason had you given Traer to fear your opposition to the payment of the dividend to him or his wife.

(Defendants object; that the plaintiff is simply seeking to contradict his own witness, which is incompetent.)

A. I never took any contentious position to the payment of any dividend to any stockholder. I remember that on one or two occasions there was an informal discussion among the stockholders, in which I participated, that a portion of the resident stockholders who had given a large amount of their time in attending to the affairs of

the company should have compensation for their services before any final dividend, but there was never, to my recollection, any
237 such allowance made. The only reason I know of why dividends were not forwarded on the Clews stock was the assumption that it was not known whether the dividend would go to the trustee in bankruptcy or to Henry Clews himself. I do not remember giving any reason to Traer to fear opposition from me.

Int. 13. State more particularly, giving the names of those stockholders with whom these discussions were had touching those dividends of Henry Clews in particular.

(Defendants object; that the witness has not testified to any discussion about the Henry Clews' dividends.)

A. The stockholders generally were J. W. Traer, J. F. Ely, S. L. Dows, D. W. C. Rowley, and Wm. Greene. In regard to the Clews dividends, I don't remember any particular discussion, only to the effect that whenever a dividend was made there should be a sufficient balance left in bank to meet any balance due on the Clews stock, so called. There was never a dividend made that would interfere with that that I know of.

Int. 14. State what gave rise to the passage of the last resolution at meeting of November 26, 1875.

A. Mr. Traer had proposed to buy up all the stock if he could get it in a way that would justify him in doing so, assuming that the small amount of stock held by him would not justify the large amount of labor necessary to close up the affairs of the company, as the remaining assets were of very questionable value, many of them claims against parties not considered solvent. Among the rest, he proposed to buy the Clews stock if he could get it at a price that would prove satisfactory. It was then thought that the Clews stock might be a part of the assets of the bankrupt estate, and forced to sale at less figures than any of the resident stockholders were willing to take for theirs, or that the trustee might sell the same at a price that would render it advantageous that the remaining stockholders should participate in the purchase. I believe these are about the substance of the influences that operated on the minds of the stockholders at the time of the passage of that resolution. I don't remember who offered the resolution.

Int. 16. You have used the term Henry Clews stock. Do
238 you intend by that to include the Clews dividends?

A. I always regarded them as one and inseparable.

Int. 17. Refer to answer of J. W. Traer to Int. 193 inquiring: "How do you know Judge Greene and the secretary opposed this?" He answers, "I know as to Judge Greene from his conversation with me." State what conversation referred to you had with Traer, leading him to understand that you were opposed to paying the Clews dividends to Traer, or any one else?

(Defendants make same objection as to Int. 12.)

A. I never had any such conversation with Traer, or any one else, only in the way of discussion at stockholder's meetings as referred

to in my answer to Int. 12. I may have said the same thing substantially to Mr. Traer in some conversation with him, but if so I have forgotten the circumstances.

Int. 18. You testified that Mr. Traer proposed to buy up the stock of the company. State whether at any time you have had conversation with him wherein he has stated that he had made such purchases of stock.

(Defendants, except J. W. Traer, object, as immaterial, incompetent, and calling for hearsay.)

A. I think he generally told me whenever he had made a purchase of stock, and on at least one or two occasions used that as an argument to convince me that I was asking too much for my stock.

Int. 19. I will ask whether Mr. Traer at any time stated to you that he had made a purchase, or was about to make a purchase, of the Clews stock, and if he stated he had purchased it, when it was. State the circumstances if you recollect.

(Defendants make same objection as to Int. 18.)

A. At the time I sold my stock to Mr. Traer he explained the different purchases he had then made, and said he would like to close out the balance, including the stock that stood in the name of Henry Clews, and wished me—I can't remember whether to write a letter or try to see the trustee of the Clews estate in New York and perhaps Clews himself, and explain the purchases he had
239 made from me and others. I do not remember that he had any conversation with me in regard to the Clews stock after that time. It is possible that it may have been the stock of Fitz-Henry Warren instead of the Clews stock that Mr. Traer spoke of at the time he purchased my stock. I remember distinctly that on one or two occasions he did speak as above of the Warren stock. All the transfers of stock, so far as my memory goes, were made to Mrs. A. D. Traer, including my own. I think 135 shares of my stock were transferred, or I made an agreement to transfer the same, together with all my interest in the assets of the Construction Co., to Mrs. A. D. Traer, in April, 1876, excepting my interest in a mechanics' lien suit then pending in the U. S. circuit court.

Int. 20. State how much and what you received in payment for the transfer of the stock interest referred to, the 135 shares, and how it was paid.

(Defendants object, as immaterial.)

A. I received in payment, according to my recollection, stock in the Union Bank of Cedar Rapids, the nominal amount of about $5,600. That was the nominal amount, and notes which I think were secured by a second mortgage on property in Benton county, the amount of about $2,500. In consequence of the large loss sustained by said bank in its loans to the B., C. R. & M. R'y Co. I did not consider that stock at the time worth more than about sixty cents on the dollar, cash, and the notes I sold for a good deal less than par.

Int. 21. State if you recollect how much of a deduction you made from the notes; who were the makers of the notes; to whom were they payable?

(Same objection.)

A. I do not remember the name or names of the makers of the notes. The principal amount was against a party who had purchased of J. W. Traer a piece of property near Vinton. I think they were made payable to the order of J. W. Traer. I do not recollect the deduction I made, but it was quite large, and I do not know of any way I can refresh my memory.

Int. 22. State who was the owner at that time of the $5,600 of Union Bank stock received in par payment.

240 (Defendants object, as immaterial and not the best evidence.)

A. I do not remember whether it was in the name of Mrs. Traer, or J. W. Traer; my impression is that it was in Mrs. Traer's name, but I may be incorrect about it. I do not remember that Mr. Traer gave any reason for having the transfer of my Construction Co. stock made to Mrs. Traer instead of himself, only that he was buying the interest in this stock for her and in her name, and I think it was all purchased in that way.

Int. 24. State what, in your best judgment, was the value of that Construction Co. stock after the payment of one dividend of $4.00 per share by the trustees, January, 1876.

(Defendants object, as immaterial; the suit is not for inadequacy of price in the purchase of the Clews stock, but for alleged active fraud.)

A. I remember only that my judgment differed very materially from that of my brother, Mr. Traer, and some others in regard to the value of that stock. It was some time after my brother and others sold stock to Mr. Traer before I could prevail upon myself to accept his offer. I remember that Mr. Traer and my brother claimed that the labor and expense of making collections and closing up the affairs would be much greater than I considered them. From $20.00 to $30.00 per share were the figures usually named among the stockholders as about a fair value of the stock. I am speaking, of course, of cash when I say $20.00 to $30.00 per share, and Mr. Traer as a rule would not offer cash at any price. My own judgment was rather vague in regard to the real value. It would be difficult to arrive at a real value of assets so unsalable and unreliable. In making this estimate I do not include either the lien claim of $100,000 or the Clews dividends of $10,500.

Int. 26. What, in your best judgment, was the cash value of what you received for the interest you transferred in April, 1876?

(Defendants object, as immaterial.)

A. Well, I should say that a very large valuation on the stock and on the notes would be less than $5,000.

Int. 27. What did you actually realize out of the mechan-
241 ics' lien claims?

(Defendants object, as immaterial and foreign to the issues.)

A. I actually realized nothing. I paid out cash quite a large amount for attorneys' fees, but consented to a compromise of the claim in consideration that the B., C. R. & N. R'y Co. would pay off or aid to pay off a portion of the notes given by the B., C. R. & M. R'y Co., the proceeds of which enured to the benefit of its successor, and which were endorsed by John F. Ely, S. L. Dows, D. W. C. Rowley, Wm. Greene, and myself. But in order to take up said notes I had to advance over and above the amount provided by said B., C. R. & N. R'y Co. about $13,000 in cash, and each of the other endorsers had to pay quite large amounts. The amount realized from the bonds and stock given by the B., C. R. & N. R'y Co. was about $17,500, and was paid on the notes above referred to.

Int. 28. Where were you at the time of the payment of the Clews dividends, and what knowledge had you of their payment, and how did you obtain that knowledge? Explain fully what you know about it.

(Defendants object, as immaterial and calling for hearsay.)

A. I think I was in New York. I heard of the payment through my brother and Mr. Rowley soon after my return, and was informed that Clews had sent an attorney here to collect the money, and that Traer, Rowley, and my brother considered his authority ample, as they stated, to justify the payment of the money. I simply inquired whether they became satisfied that the money should have gone to Henry Clews or to the trustees in bankruptcy. The substance of what I learned from my brother and Mr. Rowley was that Mr. Traer had investigated the matter quite thoroughly, and became satisfied that this attorney was properly authorized to receive the money.

Int. 29. State how much it was that you learned had been paid to the attorney of Henry Clews by Mr. Traer, and whether it was the sum standing on the books of the company due Henry Clews for dividends.

(Defendants object, as immaterial and calling for hearsay.)

A. According to my recollection the amount was over
242 $10,000. I can't name the exact figures. I understood it to be the amount shown by the books of the company to be due as dividends on the Clews stock.

Int. 30. It appears by voucher Exhibit C to Traer's deposition that $1,413.75 was allowed and paid as interest on the dividends. State if you learned that at that time or when you first learned it.

(Defendants object, as immaterial.)

A. I do not remember that anything was said in regard to the interest, nor have I ascertained anything in regard to it since that time until my attention was called to it by Exhibit C. Something may have been said about interest. I can't say. It is an item about which I have no recollection.

Mr. Belt was the regular attorney or general solicitor of the railway company. He had on two or three occasions transacted professional business for the Construction Company, but, I think, was never appointed its regular attorney, and only felt authorized to act when directed to do so by an officer or agent of the Construction Company. Mr. Belt, on two or three occasions, complained that he had transacted business for the Construction Company, for which the officers seemed disinclined to compensate him. I do not know that he ever received a cent from them. The complaints referred to were before the dissolution. I find that the Construction Company's books show that there was an allowance made to him November, 1873, of $500.

I don't think I had any conversation with Mr. Traer in regard to the collection of these dividends.

Cross-examination:

I was well acquainted with Henry Clews from 1871 to 1875, the period during which the Construction Company was in operation, and met him very often at his office in the city of New York, transacting a great deal of business with him as president of the B., C. R. & M. Railway Company.

Int. 2. Did he take his stock in the Construction Company at your request or suggestion; that is, did you bring the matter to his attention?

243 (Plaintiff objects as immaterial.)

A. He did.

Int. 3. During the time the Construction Company was in operation did you confer with Mr. Clews from time to time, when you met him, as to the transactions of that company, and keep him advised generally in relation to the business of the company?

(Plaintiff objects, as immaterial and not proper cross-examination.)

A. Prior to 1874 I frequently had brief conversations with Mr. Clews about the affairs of the Construction Company, and according to my recollection I delivered to him in person all the stock dividends to which he was entitled, and furnished all the information I possessed myself in relation to the business of the company. I usually advised him of assessments made upon the stockholders of the Construction Company and why they were made. The stock dividends to which I refer was stock of the B., C. R. & M. Railway Company delivered to the Construction Company on account of building the road and by said Construction Company divided *pro rata* among its stockholders.

Int. 4. The books of the Construction Company show, and it is in evidence by Mr. Rowley, that Henry Clews was charged on his cash dividends $2,000 paid Muscatine Western Railway Construction Company, March 16th, 1874. Do you recollect having any conversation with Mr. Clews in regard to this Muscatine Western Railway Construction Company in which he directed or authorized

this payment to be made by the C. R. N. W. Construction Company from his dividends? If so, state in full.

(Plaintiff makes some objection.)

A. I do. I was about the only one connected with the railway company who frequently went to New York to transact its business, and in that connection did more or less business for these two construction companies, and prior to the date referred to explained to Mr. Clews the assessments made on the Muscatine Western Railway Construction Company stock and requested him to authorize the secretary to draw on him for the same, but he claimed
244 that there was money due him from the railway company, and also from the old Construction Company, I believe we termed it then, the C. R. N. W. Construction Company, and accordingly arrangements were made to make the transfer as it was made March 16, 1874. There may have been some correspondence between Mr. Clews and Mr. Rowley in regard to the same matter, but of this I cannot state.

Int. 5. Do you recollect that in 1874 the officers of the railway company came to the conclusion that Clews had overreached that company in acting as its financial agent, and that it was then proposed or suggested that the interest of Clews in the Construction Company should be reached in some way, to apply on what was believed to be owing the railway company?

(Plaintiff objects, as immaterial, irrelevant, foreign to the issues, and not proper cross-examination.)

A. I remember that there was a serious discrepancy between the account of Henry Clews & Co. and that of the railway company, and that the officers of the railway company were quite unanimous in expressing the opinion that there were many large items in the Clews account that were unauthorized and incorrect; and I believe there was a suggestion that the balance due as dividends on the Clews stock might perhaps be secured to apply on any balance that may be found to be due from the firm of Henry Clews & Co., but I do not think it amounted to anything more than a mere suggestion.

Int. 6. Do you recollect the fact that a former clerk and bookkeeper of Henry Clews was here at Cedar Rapids, and that the officers of the railway company conferred with him quite fully with reference to the claim of the railway company against Clews?

(Plaintiff makes same objection.)

A. I do.

Int. 7. Do you remember that from the information derived from this clerk and other sources the officers of the railway company came to the conclusion that a suit ought to be brought, if it could be, to reach the Clews interest in the Construction Company for the benefit of the railway company?

(Plaintiff makes same objection.)

245 A. I remember that it was spoken of informally, but do not remember that any such conclusion was expressed by resolution of either the executive committee or board of directors.

Int. 8. Do you now remember that it was concluded informally, that is, without the adoption of resolutions by either company, but among the officers and members of both the railway and construction companies, that it was desirable to withhold Clews' dividends until the matter was investigated and it was determined whether Clews had in fact overreached the railway company, and whether a suit might not be brought by the railway company to recover back from Clews, and if such suit be brought to try and reach his dividends in the Construction Company by garnishment and attachment?

(Plaintiff make same objection.)

A. I do not remember any such conclusion among the officers of either company. Mr. Clews was then in bankruptcy, and I think no officer entertained any idea of commencing suit against him or against Henry Clews & Co., for any balance that might be due the railway company, but it was hoped that the matter might be adjusted by compromise with the trustee in bankruptcy with the approval of the court before which such proceedings were pending. I think the officers at the time were generally in doubt in regard to the legal ownership of the dividends due on the Clews stock. I might say the same in regard to the solicitor of the railway company, as he also expressed some doubt in the same matter.

Int. 9. Did you have any conversation with Clews in regard to the claim of the railway company that his accounts were incorrect or that he was in fact indebted to that company?

(Same objection.)

A. Never after the proceedings were commenced in bankruptcy, but repeatedly before that time. I objected seriously to items contained in his account against the railway company.

Int. 10. The record in this case shows that Clews & Co. and Henry Clews were adjudicated bankrupts about November 28, 1874. Did your interviews with Clews continue up to about that time?

246 (Same objection.)

A I had but very few interviews with Henry Clews or his firm after the commencement of 1874.

Int. 11. Can you fix the time of your conversation with Clews about the payment on the Muscatine Western Railway Construction Company stock charged on the books March 16, 1874?

(Same objection.)

A. It must have been the last of February or early in March of the same year.

Int. 12. Did Clews, at that time, know of the dividends declared by the C. R. N. W. Construction Company up to that time?

(Same objection.)

A. I do not think he did. I could not have told him from memory, and I had no written statement in regard to them with me. He doubtless understood that his stock was then, or would be, entitled to dividends.

Int. 13. The dividends, which were subsequently paid on the Clews stock, consisted of a dividend of 20 per cent., declared December 15th, 1873, and one of 5 per cent., declared January 31st, 1874, and these appear to have been the only dividends declared by the Construction Company payable in cash. Did you know of these dividends at or about the time they were declared?

A. I did.

Int. 14. Were you in the habit of communicating to Clews, in your conversations with him, what you knew yourself about dividends and assessments?

(Plaintiff objects, as immaterial, irrelevant, and not proper cross-examination.)

A. I was, prior to 1871.

Int. 15. Do you recollect that the Muscatine Western Railway Construction Company was organized in February, 1874?

(Plaintiff makes same objection.)

A. I do not remember the exact date of its organization. It must have been organized prior to March 16, 1874, and before I conferred with Mr. Clews in February or March, 1874.

247 Int. 16. At that interview in February or March, 1874, with reference to the M. W. Railway Construction Company stock, at which it appears there was a claim on Clews' part, that the C. R. N. W. Construction Company was indebted to him, was there any motive on your part which would or did lead you to conceal from him what you then knew of the 20 per cent. and 5 per cent. dividends theretofore declared?

(Plaintiffs make same objection.)

A. Not any whatever.

Int. 17. You say in answer to Cross-int. 4 that Clews claimed there was money due him from the railway company, and also from the C. R. N. W. Construction Company; state what was said between you, or what you said to Clews in regard to these claims on his part.

A. I am not so very clear that that is absolutely correct, but he said that there was money due him from the railway company, and I think he said that there was money due him from the C. R. N. W. Construction Company. I, in substance, denied any indebtedness on the part of the railway company, but said the turn might be made, I thought, with the C. R. N. W. Construction Company on account of dividends then due, or that would soon become due. I don't remember just what I did say about that, but that is the substance of it.

Int. 18. State whether Clews had sufficient knowledge from his conversation with you to enable him to know that the assets and

affairs of the Construction Company were in such favorable condition that dividends in addition to the stock dividends might be anticipated by the stockholders of the Construction Company.

(Plaintiff objects, because it calls for the opinion of the witness and not a fact. It is impossible for the witness to testify what effect conversations, the substance of which he does not now remember, had upon the mind and consciousness of Henry Clews.)

A. He certainly must have known from what I told him on more than one occasion that there would be something more than mere railway stock dividends, but how much more he could not have learned from me, for I did not know myself.

Int. 19. Did any portion of the amount realized in the compromise of the mechanics' lien suit against the railway company pass to the trustees of the Construction Company or through their hands; was the amount realized, either in form or in fact, a payment to the Construction Company?

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A. No; neither the one nor the other; nor did any of it pass through the hands of the trustees of the Construction Company. I recall the fact that in connection with the mechanics' lien suit a claim was set up by the railway company, and a suit commenced by that company in the Federal court to recover a very large sum claimed to be due from the Construction Company and certain of its stockholders to the railway company.

Int. 21. Did you know or hear of a notice being served by Gen. Winslow after he was appointed receiver upon Mr. Traer, claiming for the railway company all moneys from taxes and donations in his hands, and also all donations, notes, and books and papers relating thereto as belonging to the railway company?

(Plaintiff objects, as immaterial, not proper cross-examination, and the notice is the best evidence of what it contains.)

A. I heard that there was some such notice. I did not learn the extent or scope of it, nor whether it was verbal or written, and I attached no importance whatever to the information.

Int. 22. You said that in your estimate of the value of the stock you did not take into consideration the mechanics' lien claim or the unpaid dividends on the Clews stock; did you take into consideration the matters referred to in the last preceding interrogatories; that is, the litigation and the claim of the railway company?

A. It was taken into consideration, but it had very little influence on my judgment in regard to the value of the stock.

Int. 23. Taking all these things into consideration on both sides, would it materially change your estimate already given?

A. These matters did not have a very material bearing upon my mind in regard to the value of the stock, only to this extent: We all desired to avoid a long litigation with the railway company on the suits that were then pending, and we thought that our mechanics' lien suit would at least prove a valuable lever in bringing about a compromise and adjustment of all the suits, including the payment of the endorsed paper. I do not think

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the Construction Company stock had any market value at any time after the appointment of the trustees, nor do I know of any having been sold only among the stockholders, excepting to Mrs. Traer, whose purchases were made through her husband.

Int. 25. Taking into consideration the fact which the evidence shows, that the stock was not full paid by about 27 per cent., and the further fact that the assets were very much scattered and of uncertain value, as testified to by yourself and other witnesses, and also the fact of the pending litigation on the part of the railway company, and the fact which is shown by the evidence, that the railway company through its receiver was asserting a claim out of court to a large portion of the assets, viz., the taxes and donation notes which in fact stood in the name of the railway company; in view of all this, what, in your judgment, would the stock have sold for to an ordinarily prudent business man outside of the Construction Company after the appointment of the trustees?

A. I do not know that all of the statements contained in the last Int. are true, but they would doubtless have been used by interested parties in depreciating the price that might be obtained for the stock. But if it had been offered to a party not familiar with the assets of the company, nor influenced by the prices obtained by stockholders of the Construction Company, it is not probable that even ten dollars per share could have been obtained for the stock.

Redirect examination:

Int. —. You intimate that there had been very intimate relations between you and Clews during the time you were president of the railway company, and while he was financial agent of said company. State when such relations ceased.

A. I wished to be understood that my business relations with Henry Clews had been intimate and the transactions between us were very large, but I did not wish to be understood as saying
250 that my business or friendly relations with Mr. Clews had ever entirely ceased. After the year or the winter of 1873 and 1874 those relations were less intimate.

Int. 2. You have testified in relation to possible knowledge that Clews might have had of some dividends or other interests in the Construction Company in February or March, 1874. Do you wish to be understood as testifying that you understood or believed Clews had any knowledge of the existence of $10,000 in dividends to his credit in the two years prior to March, 1876, or at any time previous thereto?

A. I do not wish to be understood as saying that he had any such knowledge. He must have understood, however, that there was or soon would be a balance to his credit which would justify the payment of the $2,000 assessment on his M. W. R'y Cons. Co. stock. I do not understand that I testified about the payment of the Clews dividends by a compromise of any kind. I wish to be understood that in my answer to said Cross-int. 8 we hoped to effect a compromise of the account between Henry Clews & Co. and the railway company, through the trustee in bankruptcy, and in such compro-

mise it was hoped that any dividend due on the Clews stock might be made available to the railway company.

Int. 4. State why this $17,500, realized out of the compromise of the litigation between the railway and construction companies, should not be considered assets of the Construction Company, which would have added very materially to the value of the stock.

A. Chiefly because the decision of our claim before the U. S. circuit court had been adjudged adversely to the mechanics' lien claim, and further because the officials of the B., C. R. & N. R'y Co. refused to recognize or attach any value to said claim, and assumed that the bonus they gave was intended for the benefit of the endorsers of the railway company's paper, and it was used for that purpose only.

Int. 5. You speak of an assessment of $2,000 on Clews' stock in the M. W. R'y Cons. Co., and a request made by you to authorize the secretary to draw on him for it, to which he objected, saying that there was money due him from the railway company, and perhaps the C. R. N. W. Cons. Co. also, and you speak of arrangements being made for the payment out of dividends declared or to be declared by the C. R. N. W. Cons. Co. Can you give any of the details of this arrangement, whether any portion of it was by correspondence or only orally between you and Mr. Clews?

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A. Nothing more than I have already stated.

Int. 6. You speak of revelations made by a clerk of Clews, wherein it appeared that there was due said railroad company from Clews or Clews & Co. certain amounts. State whether that has ever been adjudicated and settled.

A. It never has that I know of.

Int. 7. Who were the executive committee or board of directors who had that matter in charge when it was occupying the attention of the company?

A. The president, vice-president, and treasurer of the company were members of the executive committee.

Recross-examination:

Int. Have you any doubt from what you knew yourself of the affairs of the railway company and of the accounts of Henry Clews & Co. therewith that that firm was indebted to the railway company on their account as financial agents in a large amount?

A. On the proper adjustment of the account and on charging up to Clews & Co. all the first mortgage bonds that were in their possession and appropriated by them as collateral security on loans and otherwise, I have no doubt of there being such an indebtedness. It is so long since I went over the figures in connection with the clerk referred to and Mr. Brocksmit that I should not feel safe in naming figures.

Redirect examination:

Int. Is there not at this time pending in the Federal court a suit wherein J. Nelson Tappan, trustee of estate of Clews and Clews & Co., in bankruptcy, is plaintiff and the B., C. R. & N. R'y Co. defendant, claiming of said defendant some $750,000 on account of railway coupon bonds of the B., C. R. & M. R'y Co.?

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A. There was some such suit pending, but I do not understand the nature or magnitude of the claim, which suit I understood some time since had been dismissed on demurrer.

Deposition of S. L. Dows.

My name is Stephen L. Dows; age, 47 years; occupation, contractor; residence, Cedar Rapids. I know J. W. Traer, Mrs. A. D. Traer, and Henry Clews; have known them ten years or longer. I was connected with the C. R. N. W. Construction Co.; was a stockholder and a director, I think. I had different amounts of stock, the largest $50,000. I couldn't tell how long I was a director; I think I was not at first. The records will show. I remember the meeting held for taking measures to dissolve the company. (Examines record, pp. 38 and 41.) I have a very distinct recollection of Wm. Greene, Judge Greene, Mr. Rowley, Mr. Traer, Dr. Ely, and myself being present. The affairs of the company were talked over by those present. Generally when we came together the affairs of the company were discussed one way or another.

Int. 9. At any such meetings of the board of directors state whether the stock and dividends standing in the name of Henry Clews were under discussion, and, if so, what plans or suggestion were made concerning them.

(Defendants object, as immaterial and foreign to the issues.)

A. It sometimes was spoken of as being a part of the business to be disposed of. The first I remember of is that we always supposed that, on a settlement between the railway company and Clews, Clews would be indebted to the railway company. That was one of the ways we thought that might be adjusted. Another was that we, as directors and stockholders, that is, we of Cedar Rapids, Judge Green, Wm. Greene, Mr. Rowley, Mr. Traer, Dr. Ely, and myself, had worked very hard in the interests of the company and taken some risks that the Eastern stockholders had not, and that we, as
253 individuals, would be entitled to a compensation for our services, and that would equalize a part of the balance at least.

Int. 10. That it would be clear how the Clews dividends would equalize yourselves and Eastern stockholders, state what plan or suggestion was talked over by which the Cedar Rapids stockholders would gain advantage from the Clews dividends.

(Def'ts object, as immaterial, foreign to the issues, and leading.)

A. I don't know that any particular plan was talked over. It was a business proposition that if each of these named stockholders were paid an amount for their individual service out of cash on hand it would reduce all dividends.

Int. 11. State whether J. W. Traer was present when these discussions were had; and, if so, what part he took in such discussion.

(Def'ts object, as leading.)

A. I can't say that he was always present; Mr. Traer, when there was any business to transact, was generally in his place.

At the meeting when dissolution was decided on I don't know just how long we were together; probably an hour or two; the $10,500 due Mr. Clews as dividends was spoken of; I can't remember of any plans for its payment being spoken of; there were no plans spoken of contemplating its non-payment to Mr. Clews; it was spoken of as being an amount due Clews, and the purchaser of the stock would be entitled to the dividends; something to that effect.

Int. 16. At the meeting, state whether the purpose of purchasing or acquiring in any way the Clews interest was considered, or whether that matter did not come up till afterwards, if at all.

(Def'ts object, as immaterial and incompetent, and assuming that the witness had knowledge of, or participated in, a plan to purchase the Clews interest.)

A. No definite action was taken at that meeting, but it was talked of; I don't remember that Mr. Traer took part in that discussion particularly; all indebtedness of the company was spoken of;
254 there was a general report of everything; I don't remember any particular items; the business was to be wound up, and we wanted to know what we had to pay and what the assets were; I can't remember any particular items of liability; I know there was quite a variety of items, as there naturally would be in closing up so large an amount of business.

Int. 20. Do you remember any items of dividends spoken of; if so, what?

(Def'ts object, as immaterial, incompetent, and leading, witness having already stated that he has no recollection of particular items.)

A. Yes; the dividends to Clews were spoken of.

Int. 21. Examine record of meeting called by trustees, p. 43, Exhibit O to Traer's deposition, and state who was present at that meeting.

A. My recollection is that Geo. Greene, Wm. Greene, Dr. Ely, D. W. C. Rowley, J. W. Traer, and myself were there; I think I offered the last resolution on page 44; I think there was no discussion; it was a matter in which I supposed we were all interested; I don't remember any discussion; it was offered and passed without any objection; I think all of the above-named parties were present; would not be positive as to Dr. Ely; we had talked it over and that Clews' matters were in such a shape that we supposed the stock was for sale, or would be, by his assignee in bankruptcy. There was not any understanding among us that any of our number had already taken steps looking to such a purchase, that I know of.

Int. 26. At that meeting state whether the amount due Clews' estate was spoken of.

(Def'ts object, as immaterial and leading.)

A. I think it was; I don't know that I could remember any particular individual who spoke of it; it was talked of generally; there was no understanding particularly as between ourselves, on passing

that resolution, as to who was to take steps looking to the purchase of the Clews interest; my individual understanding was that it was a part of the duty of the trustees who had the matter in charge of closing up all the affairs of the company.

255 Int. 29. In the making of such purchase was there any talk among the individuals, particularly Mr. Traer, as to how that interest might be acquired; and, if so, what was that talk?

A. Not to my knowledge.

Int. 30. You say it was your individual understanding that it was a part of the duty of the trustees who had the matter in charge by closing up all the affairs of the company to purchase that stock. How did you have that understanding?

(Defendants object, that the inner consciousness of the witness is immaterial.)

A. Because I believed it their duty to do what they could fairly and honorably for the benefit of the stockholders, those who had intrusted their interests to them. I did not know of any steps being taken by the trustees looking to such purchase, or learn of any such from the trustees themselves.

Int. 32. By reference to page 37 of record of stockholders' meeting, it appears that J. W. Traer and Wm. Greene were appointed trustees; and later, on page 42, the resignation of Wm. Greene was accepted and John F. Ely appointed in his stead. State what the understanding was as to who was to be the active trustee, other than appears from the record.

(Defendants object, as immaterial, and that the records cannot be contradicted or changed by the understanding of the witness, nor can the duties of the trustees be modified or changed by any such understanding.)

A. I don't know that there was any understanding in the matter. Wm. Greene was going to be absent in Colorado, and so resigned and Dr. Ely was appointed in his place.

Int. 33. Who, as a matter of fact, took the active charge of the winding up of the affairs of the company?

A. Mr. Traer.

Int. 34. Was there anything connected with the affairs of the company previously on his part that enabled him to manage the affairs with more facility than the other trustees? If so, what was it?

A. He had been agent for the company for some time, and
256 probably was more familiar with the details necessary to closing up the business. I don't know as the trustees were paid anything, but Mr. Traer always had a salary as agent of the company. He, from the start, had had charge of the right of way business and securing and collecting the local aid, securing of land for town sites, and sale of lots, and the collection of all payments on lots, etc.

I was present at the Union Bank the day the payment of the Clews dividends was demanded, and a gentleman was there who I

supposed was the agent of the party authorized to receive the money in the interest of the Clews estate. He was in the back room of the bank. Mr. Stibbs, cashier of the bank, and I think Mr. Traer were there. I don't remember particularly who else was there. I suppose the boys and clerks of the bank were there. Nobody said anything to me particularly about the matter while I was in the bank, other than the cashier. I was an interested party in the bank. I knew that there was $10,500 or over to be paid, and I supposed it was all deposited in our bank. Not knowing just how the cashier might be prepared for so large a payment on so short a notice, I inquired of him the facts, and was informed that only a part of the money, I think about $4,000, was on deposit here, and the balance of funds belonging to the Construction Company necessary to pay the amount was deposited with Traer Bros., at Vinton; and learning that our cashier was prepared, and supposing that the whole transaction was all right, I had no further concern about it. I was not present in the back office at a conference of several leading stockholders concerning the payment of these dividends at that time. James Bever told me that there was an agent present representing the Clews estate.

Int. 42. How did you know that there was $10,000 and over due the Clews estate liable to be demanded?

(Defendants object, as immaterial.)

A. From being a member and director of the Construction Company.

I afterwards learned that the Clews interest had been purchased. My recollections are that it was two or three months
257 after the payment of the money. Mr. Traer told me.

Int. 45. What did he tell you?

(Defendants object, as immaterial and hearsay, as to all but defendant, J. W. Traer.)

A. Altogether he said he had taken a thorn out of our flesh or side—I know he used the word thorn. I asked him what it was. He said he had purchased that old stock of Clews. I said to him I was glad of it, as that would be the end of that thing; and we had no further conversation about it.

Int. 46. In the course of the conversation, then or afterwards, did he tell you how much or what he paid for it; and, if so, what did he say?

(Defendants make same objection.)

A. He did not. I fix the time of their conversation in relation to the time of the payment of the dividends only by my memory. I know it was quite a time after the payment of the money. I did not hear anything said by J. W. Traer that day the dividends were demanded concerning this Clews matter.

Int. 49. Have you, within the past ten days, or since September 24th last, had any conversation with Mr. Traer concerning your testimony to be given in this case? If so, state what he said.

(Defendants object, as immaterial.)

A. I don't think Mr. Traer and I ever had any conversation as to what my testimony would be in this case; I know we never had. The first time I ever heard that the Clews dividends had been paid to Mrs. Alla D. Traer is now; I never heard it till now.

Cross-examination:

I am not very familiar with the business of Mrs. Traer.

Int. 2. You have had business enough of your own, I suppose, to look after without concerning yourself about the business of your neighbors? Is that the case?

(Plaintiff objects, as part of the speech that defendants' at-
258 torney may expect to make to the court, and no proper interrogation.)

A. I try to have at all times.

Int. 3. You have testified that you owned $50,000 of stock in the Construction Company. In whose name did this stock stand?

(Plaintiff objects, as immaterial and foreign to the issues.)

A. I think it all stood in the name of S. L. Dows—at least, I represented it. I think this paper now shown me is the certificate of the stock which belonged to me.

(Copy of same and endorsements attached as Exhibit 59.)

My stock was sold, I suppose, to Mr. Traer. It was some time ago, and the name of his wife may have been put in the transfer. All of the business was done by Mr. Traer, and I have thought very little about it since. The transfer was not in blank when signed by me. It was some Traer name, but whether J. W. or not I can't tell.

Int. 7. Look at the papers now shown you, copies of which are annexed hereto as Exhibit 60 and 61, and state whether your signatures thereto are genuine, and whether these papers show the contract which you made at the time of transferring your interest in the Construction Company.

(Plaintiff objects to the last clause; that the contract is the best evidence.)

A. The signatures are genuine. Yes; I think these do show the contract, and are all right. (Same annexed as Exhibits 60 and 61.) I do not distinguish in my mind or memory, with any degree of distinctness, between Mr. and Mrs. Traer, in transactions relating to the final purchase of this Construction Company stock. I think Mr. Traer said he had purchased the Clews stock himself; that is my best recollection. I think, in common conversation, he said "I have purchased it." I think I would be more likely to remember or distinguish with reference to Mr. and Mrs. Traer as to the Clews stock than with reference to my own.

Int. 11. You have stated that it was claimed Clews was
259 indebted to the railway company, and that his dividends were

held back for that reason. What was the nature of this indebtedness of Clews to the railway company?

(Plaintiff objects, as immaterial.)

A. I did not state that they were held back for that reason, but we expected Clews would be indebted to the railway company, and therewith we could pay the dividend. The railway company had placed in Clews' hands a large amount of bonds to be sold, some of which we believed he had used for his personal benefit, and if we could get a settlement with him he would be indebted to the railway company for the same.

Int. 12. Do you know how large that indebtedness of Clews' was understood to be?

(Plaintiff objects, as immaterial; the railway company is not a party to this action.)

A. There was no definite sum mentioned. It was supposed it would have been quite large if we could have got a settlement.

Int. 13. In speaking of the meeting at which the trustees were appointed you say, "There was a general report of everything; I don't remember any particular items." Now examine a record of a meeting held June 30, 1874, prior to the meeting at which it was resolved to go into dissolution, on pp. 25, 26, 27, 28, and 29 of secretary's record, and state whether the report made to that meeting is not the one which you had in your mind and which you spoke of as having been made when the trustees were appointed?

A. It is not, sir. I have reference in my mind to the meeting held up stairs in The Union Savings Bank Block and the one held afterwards in the back room of the Union Savings Bank Block, and the business affairs of the company were generally talked over. The meeting at which the trustees were appointed was held in Judge Greene's office, up stairs in the Union Bank Block.

Int. 15. Examine the proceedings of that meeting and state if you find any mention of any report of any kind being made at that time.

260 (Plaintiff objects; that the record of the meeting speaks for itself, and is the best evidence of what it contains. It is of no consequence what the witness can find here.)

A. The records might not contain a report made at that time. There was a great deal of business transacted, and any verbal statements or figures given by the secretary would not become a matter of record, or any conversation or debates would not become a matter of record or questions argued. The records themselves will show whether there is any mention of the report in them, so far as any proceedings are on record. By the statement "There was a general report of everything," I mean just what I say, that the affairs of the company were generally talked over, reported upon by the secretary as far as necessary, and everything in regard to the closing up and winding up of the business which any member thought of was generally discussed. I don't remember that there

was any written report made by anybody at that time. There may have been. If there was, the records will show it.

Int. 18. Who kept the books of the company up to the time the trustees were appointed?

(Plaintiff objects, as not proper cross-examination.)

A. D. W. C. Rowley kept the company books proper.

Int. 19. Did Traer have any more intimate knowledge of Rowley's books or of the affairs of the company than the other officers of the company, outside of the matters connected with his agency which you have already fully explained?

A. I should suppose he did. His duties as agent naturally brought him in connection with the books, I should suppose, and with the secretary, his duties being such as to make it necessary to make more frequent returns or settlements with the company. I don't know that Mr. Traer went aside from his own duties to get any information.

Redirect examination:

Int. 1. You mention selling your stock to J. W. Traer or some person of the Traer name and that you don't recollect whose name was put in the transfer. Was it not understood generally
261 among the leading stockholders that Mr. Traer was purchasing all the stock?

(Defendants object, as immaterial and calling for rumors and hearsay.)

A. Yes, sir; it was generally understood that Mr. Traer was willing to buy the stock, but as to whether it was for himself or anybody else I guess we never said anything or thought anything about that. We were glad to have Mr. Traer buy the stock.

Int. 2. Did Mr. Traer transact all the business in buying that stock?

(Defendants object, as immaterial.)

A. He did as to the stock I represented. The agent selling those bonds was Henry Clews & Co.

Int. 4. If there was an indebtedness on account of the bond transactions would it be against him personally or against his firm?

(Defendants object; that it has been many times decided by the supreme court of Iowa that a partner is originally and individually liable for all debts of the firm. The opinion of the witness cannot change the law.)

A. It would be against the firm.

Int. 5. In answer to Cross-int. 11 you say in substance, "we believed Clews owed the railway company." Whom do you refer to by "we"? Do you include Mr. Traer?

A. Yes, sir; I include Mr. Traer and all the other members of the company present.

Int. 6. On cross-examination you speak of two meetings connected with the dissolution of the company, one up stairs and the

other in the back room of the Union Bank. By reference to record, page 36, a meeting is spoken of on February 15 of stockholders, and connected with the same record there appears to have been action on the 20th of February. State where each of these sessions was held.

A. I think all that business was done at the same meeting, up stairs in the Union Bank.

262 *Deposition of James L. Bever.*

My age is 41 years; residence, Cedar Rapids, Iowa; occupation, cashier City National Bank. I owned some stock in the C. R. N. W. Cons. Co. before its dissolution, and was a director for a short time. I think I owned about 25 shares. I think I sold to Judge Greene; can't tell exactly what I did get in value. It was a trade. Don't remember whether I was present at the time of the dissolution of the company. I don't know whether I knew at that time how much stock was held by Henry Clews.

Int. 7. State if you recall the circumstances of the payment by J. W. Traer of the Clews dividend. State what conversation you had about that time in relation to it with Mr. Traer.

(Defendants, except J. W. Traer, object, as immaterial, incompetent, and calling for hearsay, by which they are in no manner bound.)

A. I don't know as I had any conversation with him about it, other than the fact that that party had come here to settle it up, or something to that effect.

Int. 8. Do you recall who it was that he said came out here and collected those dividends, or whom it was collected for, or whether they (Traer and others) had had hard scratching to make up the money, or something of that kind?

(Defendants make same objection as last above.)

A. All I can remember in regard to the circumstances is stated in the former answer. The conversation was more as a passing remark, or something of that kind.

No cross-examination.

By agreement same witness is examined on behalf of defendants.

Direct examination:

About the winter or spring of 1876 I received from J. Nelson Tappan a letter of inquiry with reference to the C. R. N. W. Cons. Co., and here is the letter. (Copy of same is attached as Exhibit
263 31.) February 15, 1876, I answered the letter and kept a letter-press copy, which I now produce. (Copy of same attached as Exhibit 32.) I did not keep a copy of the list of assets enclosed in this letter. I examined the list before sending it. I had no means of checking it up, and took it for granted that it was a fair statement. The statements in my letter to Mr. Tappan were made honestly and fairly in accordance with my judgment and information at the time the letter was written.

Cross-examination:

Int. You say in yonr letter, "Not being familiar with the details of the Construction Company, I called on the trustees." On which of them did you call?

A. I think Dr. Ely was out of town and I called on Mr. Traer. In my investigation I had a conversation with Judge Greene. He gave me a general outline, and referred me to the trustees for more definite information. I think it was Judge Greene. It was Judge Greene or Wm. Greene. The detailed statement furnished by Mr. Traer was substantially all the information I obtained, except the other matters which I mentioned in my letter of February 15 to Mr. Tappan. I was elected a director of the company to fill a vacancy merely, and paid but little attention to the duties pertaining to the office, and knew but little concerning the assets and liabilities of the concern.

Redirect examination:

Int. State whether J. W. Traer at any time furnished you with a list of the assets of the Construction Company other than that forwarded by you to Mr. Tappan.

A. I don't remember of ever having but the one list, the one I enclosed to Mr. Tappan.

Deposition of James Armstrong.

Commission issued on April 28, '79.

My age is 43; residence, No. 53 West 33rd street, New York city; occupation, attorney-at-law. Prior to this I resided at No. 21
264 West 30th street about three years, and my occupation was the same. Have known plaintiff four or five years and J. W. Traer three years. First became acquainted with both of them in New York city; cannot say definitely when I became acquainted with them. First became acquainted with Traer some time during the winter of 1876; cannot give exact date. Have met him in New York three or four times at my office, No. 319 Broadway. Don't remember that there was any one present at these meetings but Mr. Traer and myself. He called upon me on business. Called on me two or three times during the winter of 1876; cannot give the exact dates. Think he called upon me in the spring of 1877, although I am not sure of that. I have had conversations with J. W. Traer relative to the sale of 50 shares of stock in C. R. N. W. Construction Company, standing in name of Henry Clews, or the trusteee of Henry Clews. All of the conversations I have had with J. W. Traer in relation to the fifty shares of stock in C. R. N. W. Construction Company were had while I was acting as his attorney, and I decline to state them or the substance of them. So far as I now remember no one was present but Mr. Traer and myself. All of these conversations I think took place at my said office, except possibly one may have taken place at the Astor House, in said city. I was employed by the said Traer for himself and one Howard, of Chicago, in relation to the purchase of said stock.

Int. 9. State what you did as such agent, attorney, or broker for Traer; give the time of transaction and full particulars.

A. I decline to state anything I did as attorney for Mr. Traer in relation to that subject. I was never employed as a broker or agent for said Traer.

I have met J. Nelson Tappan on two or three occasions, the first time in the winter or spring of 1876; cannot fix the time more definitely. I called upon him and had a conversation with him in relation to the purchase of said 50 shares of stock for Traer or for said Howard. I think I called upon Mr. Tappan twice. Think one call was in the spring of 1876, and the second in the winter or spring of 1877. Do not remember the exact dates of either. I decline to give the substance of any of said conversations had with him. Do not remember that any one was present at such interviews but
265 Mr. Tappan and myself, although I think at the first conversation with him one of his clerks was present; cannot give his name. I have not answered that I did not purchase said 50 shares for said J. W. Traer. I purchased it for said Howard, as I understand it, for either $1,200 or $1,500. I called at request of Mr. Traer in the winter or spring of 1876. The purchase was made for cash. I received the authority to make the purchase of said stock in the winter or spring of 1876 from John W. Traer, verbally. I decline to give any directions communicated to me by Mr. Traer on the ground that I was acting as his attorney. I did purchase said 50 shares of stock in the winter or spring of 1876 of said Tappan for said Howard for either $1,200 or $1,500, by check I think. Mr. Tappan and his clerk were present when he signed the assignment and received the check. The transfer was made by written and printed endorsement on the back of the certificate. The transfer was made in blank.

Int. 16. State whether Mr. Traer ever made any statement to you in relation to tho value of said 50 shares, or the value of C. R. N. W. Construction Company stock, and state what they were.

A. I decline to state any conversation I had with Mr. Traer in in relation to this matter, as I was acting as his attorney. I decline to produce any letter written to me by Mr. Traer in relation to this matter for the same reason.

The transfer of said stock was in writing and printing on the back of the certificate and was absolute. My present recollection is that I sent the certificate to said Howard. The name of the purchaser was said Howard. I acted as his attorney. I disposed of it in the way I did by the direction of the purchaser in writing. I decline to produce the letters because they were written to me as his attorney. I cannot now say whether the writing is lost or not; and I decline to produce or state the substance for the reason that it was sent to me by said Howard as his attorney. I believe I did comply fully with the authority.

I do not know the wife of defendant, J. W. Traer, and never had any business transactions with her.

Int. 21. State if at the time of purchasing said 50 shares, and

the transfer of said certificate, anything was said about any
266 other stock or any other interest in stock or other property or interest whatever; and, if so, what?

A. Nothing whatever, so far as I remember.

I purchased with the stock some declared, but at that time upaid dividends accruing upon said stock. I can't give the items. The transfer was in writing, and formed a part of the transfer of the stock, and was sent to said Howard, and I cannot furnish a copy of it. Previous to making said purchase of said stock I had correspondence with both said Traer and said Howard, but I decline to disclose said correspondence, because at the time I was acting as their attorney. After the purchase of said stock I had correspondence with J. W. Traer, of Cedar Rapids, and with, I think the initials are, A. D. Howard, of Chicago. I decline to furnish said correspondence for same reason as before. I sent said certificate of stock by mail to said Howard, of Chicago, some time in February or March, 1876, at his request. I don't remember of ever having any correspondence with Traer Bros., brokers, of Vinton, in relation to this matter. The only acquaintance I have with A. D. Howard, of Chicago, was through the correspondence above spoken of, which commenced in the winter or spring of 1876. I had no interest in the purchase of said stock. I don't know what induced Mr. Tappan to sell the stock for $1,200. I made no representations whatever relative to the value of the stock or the property of the company issuing it to Mr. Tappan or any one representing him. Some time prior to the purchase of said stock I called at the office of said Tappan and found there a clerk in charge of his business as trustee of the Clews' estate, and said to him, after some little preliminary conversation, that I desired to purchase 50 shares of stock of the C. R. N. W. Construction Company, belonging to that estate, and everything that pertained to those shares except a dividend of $200, which the trustees of the Construction Company had notified them they would remit. I then made him an offer for the stock. He said he would make an investigation as to its condition and value, consult with Mr. Tappan, and advise me of the result. Some two or three weeks afterwards I received a note from this clerk, whose name I don't now remember, advising me that Tappan had concluded to accept my offer. Shortly afterward I procured
267 a certified check for the amount of my offer, and went to the office of the trustee, showed the clerk the check, he got out the certificate for the 50 shares, and said we should have to go to Tappan's office, as chamberlain of the city of New York in the new court-house, for the purpose of getting his signature to the assignment. Up to this time I had never seen Mr. Tappan in relation to the purchase of this stock. On going to the chamberlain's office we found that Mr. Tappan was at Delmonico's taking dinner. We went there and I delivered the check to Mr. Tappan, and he signed the transfer. I said to Mr. Tappan at the time of his signing the certificate that I wanted said 50 shares and all the dividends that belonged to it. I did not know the amount of dividends, and said nothing to him about it. I don't even now know the amount of

such dividends. My present recollection is that the certificate of stock was handed to me by Mr. Tappan's clerk or by Tappan himself after he had signed the transfer endorsed upon the back of said certificate. I received no instructions from Tappan—there was no letter accompanying it. I was engaged by both said Traer and said Howard to make said purchase. I decline to state how much, when, or by whom I was paid. The money to pay for said stock was furnished by the Corbin Banking Company of New York city. The amount was, I think, $1,200, by check drawn by Austin Corbin to the order of J. Nelson Tappan, or possibly to my own order. I purchased 50 shares, with all the dividends which had been declared on them and were at that time unpaid. My authority for the purchase was specific. I sent said certificate by mail to said Howard, at Chicago, Illinois, at his request. I decline to furnish the correspondence. I never had a word of conversation with said Clews until long after the purchase. So far as I remember I had no other conversation with said Tappan, except as I stated above. I made no representations as to the dividends therefore declared. To the best of my recollection I was never furnished with a list of the assets of the Construction Company by any one. My understanding was that the transfer of the certificate carried with it all unpaid dividends. I don't remember anything that was said by Tappan at the time of the transfer, nor do I know in whose handwriting the written portion of the transfer is. It was not written in my presence.

268 The name of the transferee was left blank. Said blank endorsement had not been filled out prior to my delivery of the certificate. I hold no relation now to defendant, John W. Traer. I have had no communication with any person in reference to the evidence I should give in this case. I have had a conversation with Mr. D. C. Briggs, an attorney in this city, who represents Mr. Traer in an action pending here between the same parties, and involving the same subject-matter, as to the evidence I could give. I cannot undertake to detail this conversation.

Subscribed & sworn to May 12, '79.

Filed May 19, '79.

Deposition of M. Howard.

Commission issued May 5, '79.

My name is Martin Howard; age, 38; residence, Chicago; occupation, lawyer. I have known of plaintiff some years; do not know him personally. Have known defendant, John W. Traer, more than ten years; knew him in Iowa. Cannot say that I am acquainted with Mr. Armstrong, except by way of correspondence, unless I met him occasionally in Davenport, Iowa, where I believe he once lived. Have done business for him as I supposed and believed, and what business I did for him I did as a lawyer. About March 10, 1876 (perhaps a little later, for the letter is dated New York, March 10, 1876), I received a communication signed James Armstrong, placing in my hands certain business. I received a letter signed James Armstrong, directing me to proceed to collect

any dividend on certain stock evidenced by certificate No. 48 for fifty shares of the capital stock of the C. R. N. W. Cons. Co., also placing in my hands said certificate. I did the business, as I supposed and believed, for James Armstrong. My instructions and directions I must decline to give unless a court of competent jurisdiction shall say that narrating these instructions does not violate the obligation of attorney to his client. Am very willing to state everything connected with the affair so far as I know, if it is proper that I should do so. I cannot recollect whether the certificate of stock was mailed to me with the letter heretofore referred to, or handed to me. My authority for disposing of said stock was simply to collect dividends, not to sell the certificate, as I understood
269 it, and was from Armstrong. My recollection is that I received the certificate in March, 1876; am not positive. Think I collected one dividend and returned home, and before another dividend was collected I was discharged in writing, by letter signed James Armstrong, dated May 15, 1876. So far as my instructions are concerned, I have stated all I feel at liberty to state, and I cannot attach letters or copies without the court should decide it proper for me to do so. I will say here that I have no secret in the premises, and if others interested are willing I shall cheerfully submit all correspondence and communications.

I do not state that I received the certificate from Traer. As before stated, I supposed I was employed by James Armstrong, trustee, (as represented to me by letter) of Henry Clews' estate. My fee was very nominal for the services performed. My recollection is that I was engaged one day at the time I went to Cedar Rapids. My books show a charge of $100 a day, which I believe I retained out of money collected. I cannot detail further circumstances that I know of concerning my employment. Went to Cedar Rapids by railroad. As to my instructions, I have stated. There was nothing mystic or singular about my business. I had the certificate, went there to collect dividends, which I did. Cannot remember to whom I first communicated on my arrival touching said stock and the business in hand. Believe when I first arrived I looked for the office of the Construction Company. Think I saw Mr. Traer and several other gentlemen at about the same time. Don't remember from whom I demanded the money first. I had the certificate of stock duly assigned, and was employed for that purpose, as I supposed and believed, by James Armstrong, who was represented to me to be the trustee of the estate of Henry Clews. The certificate was not endorsed to me, if I remember correctly, but was signed in blank. It seems to me that my written authority, which I still have, authorized me to place in the blank the name of any person necessary in the premises. I do not think my authority was by power of attorney endorsed on the certificate. My authority was by simple employment, with such letters and writings as were necessary in the matter.

I cannot recollect how much I demanded; I believe I de-
270 manded all that was due. I can't remember whom I made the demand of. It was on account of the dividends claimed

to be due the holder of the stock I represented. I cannot remember the amount paid me without reference to books and papers, which I have not now time to make. Cannot remember whether it was in currency or drafts, but think it was in currency. I believe the money was paid me at the banking house of Traer Brothers, in Vinton, Iowa, but would not swear to that. I believe I deposited the money as directed. The certificate of stock I think I surrendered to the Construction Company, or its receiver, and took a receipt, notified my client, Mr. Armstrong. Received his letter shortly afterwards, acknowledging what I had done to be correct and in accordance with instructions. Don't remember to whom I receipted, but believe to the receiver of the company. My receipt is certainly in existence. I deposited the money as directed. I may have paid it over, since I think of it, but about this I cannot answer at once. My books and papers might reveal this, but I doubt it. I have no further recollection as to names or otherwise, but if desired will examine such papers as I can find and make further answer. I did not bring any money with me to Chicago from that trip except my own, which did not exceed $200. My fees were paid to me in currency, as I recollect, out of the money I collected. I paid myself.

Int. —. What objection was made to your charges in the premises, if any, and by whom were they made, and for what reason, and what, if any, reduction was made in the amount?

A. I do not think I should state at this time. I am, however, willing to do so if it is held proper.

I had no interest whatever in said stock, absolutely none. My connection with the whole matter was simply as an attorney. I performed that duty in good faith. I cannot remember what, if any, demand was made by me for any intererst upon any of said moneys received by me. I presume I demanded all that was due.

Int. —. At whose suggestion was said demand for interest made and why was it not pressed and insisted upon?

271 A. I can't remember that. As to my authority to make the collection of dividends, I had a letter from James Armstrong. I decline to attach a copy of the original or the original, or to give the substance, except that the letter gave me authority to so act, unless it be held that I have a right to do so.

Int. 32. Did the whole $10,500, or thereabouts, by you collected, ever pass fully and entirely into your hands or under your control, in cash or equivalents; and, if otherwise than in cash, what did they consist of? State fully and particularly.

A. My recollection is that the money was actually paid into my hands, and by me paid over or deposited. I do not remember the amount. Don't remember whether any sum was paid me at Cedar Rapids before I went to Vinton. I had thought not; I may be mistaken. Do not remember whether any one went with me. Do not remember that I had any money, checks, or drafts in my possession when I entered the bank of Traer Brothers at Vinton, save my own, say $50 or $75, which I had before going to Cedar Rapids. I may have had a part of the dividend, but don't remember. I somehow think the dividend was paid me at Vinton. I cannot remember

how much money, checks, or drafts I had in my possession at any time while there, or how much I had when I left said banking house.

Int. —. Did you at any time conclude that the transaction was a swindle; and, if so, when; and what were your reasons for arriving at that conclusion?

A. I think this an improper question, and, unless directed by the court, must decline to give any conclusion.

Int. 37. If, in answer to the last Int., you give reasons that led you to believe that J. W. Traer was transferring funds from one hand to the other, state fully and particularly all the facts that led you to that conclusion.

A. I did not give reasons that led me to any such conclusion.

Int. 38. State what was the first circumstance that excited your suspicion and led you to suspect strongly that things were not what they seemed; in other words, that J. W. Traer was working to
272 convert a trust fund in his hands into his own property and to his own use, and that the formal transfer was made simply to cover up that transaction.

A. I do not wish to give my conclusions; am willing to give facts, so far as I know them, and so far as it is proper that they should be detailed.

Int. 39. State what other circumstances transpiring on or about that time tended to confirm you in your suspicions that there was crookedness in the transaction. State them fully in detail.

A. I think this question improper, and decline to answer unless directed to do so by the court.

Int. 40. State to whom you communicated your suspicions at the time.

A. The same objections as heretofore. Besides, I have not stated that I had such suspicions.

Int. 41. With whom have you had any communications since your return to Chicago from Cedar Rapids, touching the transactions of that trip, and state the substance of them.

A. Mr. Frank G. Clark called on me and said considerable; can't remember all he said—indeed, but very little, and can't give the conversation, as I don't remember it. The general tenor of it was that he suspected fraud on the part of Traer, and wanted to know what I knew. Think I told him for whom I had acted in the transaction. Mr. J. W. Traer has been in my office since my trip to Cedar Rapids, once or twice, and he said something to me about this case, but nothing of any importance. I think Mr. Clark was the first man that ever called or said anything to me about it. A letter was written me, I think, by the receiver of the Construction Company, enclosing a receipt for further dividends for me to sign and return, which I declined to do. I think no other communications have been had; if any, I do not remember them now. I decline to attach the letter referred to, because it contains some things not relevant, etc.

I have had no communications with Traer or any other person concerning these interrogatories, except with the commissioner, T.

C. Hale, and J. S. Grinnell, a lawyer of Chicago, which were
273 unimportant, and only casual conversations, such as could in nowise affect this suit. Neither J. W. Traer nor his attorneys have ever written me anything whatever concerning this deposition, nor have they spoken to me about it at any time, nor did I know it was to be taken till a few days ago, when Mr. Hale notified me.

Subscribed & sworn to May 30, '79. Filed June 14, '79.

Deposition of J. Tracy. Taken Dec. 31, '79.

My age is 54 years; residence, Burlington; occupation, attorney-at-law; have known all the parties to this suit, except Mrs. Traer, for over ten years; Mrs. Traer I have met and have a slight acquaintance with her, formed within the last four years; I was the first attorney elected by the B., C. R. & M. Railway Company, and served that company in such capacity about one year, I think; am not positive as to the time; became attorney of Gen. E. F. Winslow upon his appointment to the receivership of the property in July, 1875; have continued in that capacity ever since, and am still so acting; I have known nothing about the matters of the C. R. N. W. Construction Company whatever, except such as I have incidently heard from others; was not a member of the company; I was not as attorney for the B., C. R. & N. Railway Company concerned in suits brought by that company against said Construction Company. Judge James Grant had charge of that part of the business. I had no personal knowledge of dividends to the credit of Clews' estate in said Construction Company, and all the knowledge that I had, except incidental talk in my presence since this litigation commenced, was from John W. Traer.

Int. 7. Please state what you learned from J. W. Traer in any conversation had with him concerning certain dividends of Henry Clews, or relating to his bankrupt sale.

(Defendants, except J. W. Traer, object, as immaterial, incompetent, and calling for hearsay.)

A. In answer I would state that shortly after I became attorney of the B., C. R. & M. Railway Company under Gen. Winslow as receiver, J. W. Traer occupying the position at the same time of
274 general agent of the company under the receiver, spoke to me about this Clews dividend matter. He said, if my recollection serves me right, that he did not think Clews or his assignee in bankruptcy attached much importance or value to the Construction Company's stock owned by Clews, or that was standing in his name; that he thought that Clews, owing to his financial embarrassment, had lost interest in the matter, and that the Clews construction stock might be purchased for a very reasonable or nominal sum; that he, Traer, did not know what the stock was at that time really worth, but there was $10,000 or thereabouts in the bank of Traer Bros. at Vinton that belonged as dividends to the Clews stock, and asked me what I thought of the propriety of making

an effort toward purchasing the Clews stock upon such terms as could be agreed upon; and I think, and of this I am not positive, he suggested that he and I should go in together and make the effort to purchase the stock, and if we could get it at such figures as to make a little money out of it he would be glad to make some himself, and pleased to see me make something. At present I have no positive recollection of having any other conversation with Mr. Traer about the matter, but after consulting with Gen. Winslow think I said to Mr. Traer that, owing to my connection with the railway company and its property, I thought it inadvisable to go into the matter with him. Since my answer as above is read to me I now call to mind that some time after the conversation above referred to Mr. Traer said to me the Clews assignee in bankruptcy had ascertained about the money on deposit at Vinton, or some one acting in the interest of the assignee, and had come out here, receipted for it, and had taken it away. My best recollection is that the first conversation I had with Traer about the matter was in the fall of 1875 or early in the winter of 1875–'6. The first of the conversations took place in the room occupied by Traer in the Union Bank Block; and if my recollection serves me correctly, the conversation in regard to the money being taken away was on the train between Cedar Rapids and Vinton. I have no recollection that any one was present and heard either of the conversations except Traer and myself. I have no recollection that he called my attention to any books of the Construction Company at the time of the first conversation. My recollection is that at the second conversation
275 Mr. Traer expressed himself in substance following: That the Clews matter that he once had spoken to me about had been closed up, and it was now too late to do anything in respect to the matter of purchasing Clews' stock, or that it would do no good to purchase it now, as it would really be worthless, as probably no other dividend would be paid; and I think he remarked in that connection that if I had gone in with him and prompt action had been taken some money might have been made out of it.

Int. 12. By the expression, "purchase the Clews stock," do you wish to be understood as testifying that the proposition made covered the stock only, or the stock and dividends?

A. My understanding was that the owner of the Clews construction stock would entitle the holder thereof to the money in bank at Vinton, and in speaking of purchasing the Clews stock I mean to be understood that the getting of the money or a portion of it at Vinton was the object to be attained by such purchase. I cannot give the date of the last conversation with any degree of certainty. It was at a time when Traer and I were going up to Vinton to attend court in the spring or fall of the year 1876. My best recollection is that it was in the spring of the year 1876. The impression left upon my mind by the conversation is that Clews' assignee in bankruptcy had drawn the money, and I might here state that my reason for such impression is that Traer, at that time, stated that a sharp, shrewd attorney or agent, acting in the Clews interest, had

come here, examined the books, ascertained the state of the account, and drawn the money.

I have no recollection of Traer's talking to me about the Construction Company stock, except the impression he gave me at some time that he owned a large or controlling interest in it. I cannot fix the time of this conversation as before or after one or both of the conversations referred to, and I could not say that the conversation had any relation to the Clews matter, but may have grown out of some business I had with Mr. Traer connected with railroad matters, but entirely disconnected with this Clews matter.

Int. 17. State whether in the first conversation referred to any mention was made of Clews, or his assignee, being in ignor-
276 ance of said dividends having been declared.

A. Yes. The impression left on my mind from the conversation is that Clews, or his assignee in bankruptcy, did not know of the declaring of the dividends or the deposit of the money at Vinton; but they did know the amount or par value of the stock, and under the circumstances of the railroad and Clews becoming bankrupts that an offer of a reasonable or small sum of money to the assignee would be accepted and the stock transferred, as before mentioned, which would entitle the holder to the money in bank.

Cross-examination:

Int. —. Did you understand from Traer that the money was deposited at Vinton to pay the Clews dividends at the time they were declared, and had remained there subject to demand for that purpose up to the time of your talk, so that Clews or the holder of the Clews stock might have received the dividends at any time on demand?

A. I can't say that I did so understand. Mr. Traer was not very specific as to the situation of this $10,000 or dividends, but assured me that if we could become the owners of the stock we could receive as much as $10,000 of dividends, and that it was deposited in bank or in some way connected with the Traer bank at Vinton, or the officers thereof, and in such manner that if we purchased the Clews stock we would be reasonably certain to get that amount of dividends.

Int. 2. Did you understand that there was, or had been at any time, any obstacle to the holder of the Clews stock receiving the dividends to which the stock was entitled on demand?

A. Yes. This question now calls to my mind that Clews & Co.'s connection with the B., C. R. & M. Railway Company was mentioned by Mr. Traer, and that probably difficulties would arise in the settlement of their matters which might involve this Construction Company stock dividend.

On consulting with Gen. Winslow, as stated in my examination-in-chief, in regard to the talk I had had with Traer, he sug-
277 gested that litigation might grow up between the Construction Company and the railway company or its bondholders. Principally it was this possibility of complication between the two companies which led me to decide that I would have nothing to do with the matter. I might say that I looked upon the matter as somewhat uncertain in its results. I mean the purchase of the

Clews stock, owing to the reasons I have above given and the embarrassing position I might be placed in as attorney for the receiver and the new organization if I became a part owner in that Construction Company stock. I do not pretend to give the language used by Mr. Traer in the various interviews I have mentioned. I may be permitted to remark, I looked upon it as a business transaction worthy of consideration at the time, and after I had dropped it and concluded not to go into it, gave the matter no further thought from that day to this, except as the matter of Mr. Traer's connection therewith developed by this suit has been talked over or discussed in my presence.

Deposition of James L. Bever.

I have been cashier of the City National Bank since its organization, about 16 years. I can find no record on the books of the bank that the C. R. N. W. Cons. Co. ever had an account there, nor the trustees since the dissolution of the company.

Int. State whether John F. Ely as trustee, or John W. Traer as trustee, together or separately, had an account as trustees at your bank subsequent to the dissolution of said Construction Company.

A. They had not.

(The parties stipulate, subject to defendants' objection, that it is immaterial, incompetent, and foreign to the issues that the account of Traer and Ely, trustees of the C. R. N. W. Cons. Co., with the Union Bank of Cedar Rapids, had to its credit on the dates mentioned below, the amounts opposite said dates respectively:

278	January 1, 1876	$4,531 04
	" 15, "	4,595 19
	February 1, 1876	4,742 51
	" 15, "	4,696 21
	March 1, "	4,343 86
	" 15, "	4,348 53
	April 1, "	2,271 75)

Deposition of Ely E. Weare.

My age is 30 years; residence, Cedar Rapids; occupation, assistant cashier First National Bank. Have been assistant cashier about two years and employed in said bank about six years. Have been familiar with some of the books, with the certificates of deposit book and draft book. I have in my possession the books showing the deposits made in said bank during the years 1875 and 1876. December 22, 1875, J. W. Traer, trustee, had on deposit $1,000, as shown by stub-book of certificates of deposit. The trustees of said construction company kept no open account at the bank. There was no further or other deposit by the trustees of said Construction Company or J. W. Traer, trustee, subsequently up to January 1, 1877. I can find out when that certificate of deposit was taken up by hunting up the certificates of deposit on file. It might take a long search to find it.

Deposition of D. W. C. Rowley.

I am confident that I never refused at any time to certify to the showing of the books in respect to Mr. Clews' account, and that I am not aware of ever having neglected to do so. Am not aware that there was ever any dispute about the correctness of the entries of Mr. Clews' account, and do not remember to have ever doubted the correctness myself. I haven't any recollection of saying anything to Mr. Traer about the Clews account at these particular times
279 (fall of 1875 or winter of 1876), yet I may have talked with him about the account. I don't think I ever stated to Mr. Traer at any time that the Clews account on the ledger of the Construction Company was in dispute.

Int. 3. Referring to the Clews accounts as they stood on the ledger, Mr. Traer, in answer to Int. 13, deposition on his own behalf, as to whether the situation of the account could be determined from an inspection of the ledger, testifies: "They could not be by any ordinary inspection, but only by going back through the books and checking them up, which would involve going through the books of the company for some time back and since the opening of the account, and because there was nothing in his cash-book or journal or ledger to indicate that all items had been entered." State what examination was necessary to determine that, on the 20th of February, 1875, and how intricate and how long an operation that would be to one conversant with the keeping of books.

(Defendants object, as the books are the best evidence.)

A. It would not have been a difficult matter at all for any intelligent, active, and prominent member of the Construction Company to have satisfied himself at that time that the account of Henry Clews was complete and full. The entries are few, not reaching, I think, half a dozen, which determine the status of Mr. Clews' account, and the basis of all such entries was perfectly familiar to all such persons referred to above.

Int. 4. Read Cross-Int. 59 of deposition of J. W. Traer in his own behalf, and *and* answer thereto, where he says he thinks the figures at the top of your certificate to John W. Traer, Exhibit D, "1875," where a clerical error, because he thinks he (Rowley) wrote it in the room. State whether that certificate was written March 19th, 1876, in the room referred to, instead of on the date of the certificate itself.

A. I am confident that the certificate referred to was written on or about the date shown upon the certificate itself. Don't know where that certificate was during the thirteen months following its date, if not delivered to Mr. Traer at or about the time it was written. I think it must have been in the hands of Mr. Traer.

280 Int. 6. Mr. Traer testifies, in answer to Cross-Int. 95, deposition on his own behalf, that he thinks the secretary told him, about February 14, 1876, that no certificate had been issued to Mr. Clews for his fifty shares. State whether you told Mr. Traer at that or any other time that no certificate had been issued to Clews for his stock.

A. It is very probable that at some time I stated to him that no certificate had been issued to Mr. Clews for his stock. Do not know whether it was at the time referred to or not. I do not recall whether I stated to him no certificate had been issued or delivered to Henry Clews.

Int. 8. Mr. Traer, in answer to Cross-Int. 119, deposition on his own behalf, testifies: "I think Rowley knew of the certificate (referring to the certificate of Henry Clews) being sent." State your recollection of the matter.

A. I have no recollection about it.

I was never in the habit, while in the employ of the Construction Company, or doing business for myself or others, of transacting business on Sunday.

Deposition of J. Nelson Tappan.

Commission issued May 27, '79.

I reside in New York city. I am the trustee in bankruptcy of the joint and separate estates of Henry Clews and Theodore S. Fowler, as partners composing the firm of Henry Clews & Co., and individually. Have been such trustee since February 18, 1875. Am acting as such trustee. I know Richard A. Southwick, late of New York city.

Int. 5. Did you or did you not ever employ him? If yea, in what capacity and during what time?

A. I did, in the capacity of clerk or assistant to myself in winding up the affairs of the joint and separate estates of Henry Clews and Henry Clews & Co. Said employment commenced some time in the spring of 1875; I think May, but cannot tell without
281 looking at my books, and continued until his death, February 8, 1879.

Int. 6. Do you know whether said Southwick is now living?

A. He is not now living, as I know. I attended his funeral and saw his remains.

Int. 7. If you state said Southwick is not living, state where he died, and whether you attended his funeral; and, if so, where it occurred.

A. He died about February 8, 1879, and I attended his funeral. I think it occurred February 11, 1879.

I know the plaintiff, Henry Clews. Am not aware that I know either of the defendants.

Int. 9. Did you or did you not, individually or as trustee of Clews or Clews & Co., or otherwise, ever execute and deliver to any person any paper touching fifty shares of stock in the C. R. N. W. Cons. Co., standing in the name of Clews or Clews & Co., or the trustee of said Clews or Clews & Co.? If yea, state to whom you delivered same, and describe said paper.

A. I did execute and deliver to James Armstrong a paper touching the fifty shares of stock in the C. R. N. W. Cons. Co., or as I recollect it in the C. R. N. W. Cons. Co., standing in the name of Henry Clews, but belonging to me, as trustee in bankruptcy of Henry

Clews, bankrupt. I delivered said paper to a lawyer by the name of James Armstrong, claiming to act for J. W. Traer. As to a description of said paper I so delivered, I have to say that said paper was on one side of it a certificate in ordinary form for fifty shares of the capital stock of said company, and stating in substance that Henry Clews was the owner of fifty shares of the capital stock of said company, and stating the number of shares and the par value of each, and stating that said certificate and shares were transferable upon certain conditions, and said certificate signed by certain officers of said company. On the back of said certificate was an assignment of said shares, a printed form in blank, or rather the name of the assignee in blank, together with a printed form for power of attorney. I signed said printed form on the back of said certificate and delivered same so signed. This is my recollection of the paper.

282 (Defendants move to suppress that "claiming to act for J. W. Traer," because the same is immaterial, incompetent, and hearsay, and not responsive to the question; and further, move to suppress all the remainder as immaterial and incompetent. The certificate and assignment are the best evidence of what they contain.)

Int. 10. What do you know, if anything, in respect to an assignment of fifty shares of stock in the C. R. N. W. Cons. Co., made about March 4, 1876, by J. N. Tappan, as trustee of Clews & Co., or otherwise, to one James Armstrong?

A. On or about the day referred to I made and delivered an assignment of fifty shares of stock such as is inquired about.

Int. 11. If you state that you executed an assignment of fifty shares of stock in the C. R. N. W. Cons. Co., state whether or not such assignment was a printed form on the back of such stock, and state what writing, if any, was written in said assignment when you executed and delivered same.

(Objected to, as immaterial, incompetent, and foreign to the issues. The assignment itself is the best evidence of its contents.)

A. Such assignment, as I recollect, was a printed form on the back of such certificate. No writing was written in said assignment when I executed and delivered the same. I am clear in my recollection there was no writing. I received the consideration of $1,200 for such assignment.

I produce copy of letter dated Cedar Rapids, Iowa, February 14, 1876, addressed to me, signed J. W. Traer, trustee; it is a true copy; the original I cannot find, after careful search; also a statement to J. N. Tappan, trustee, etc., dated February 4, 1876, signed J. W. Traer, trustee, Cedar Rapids, Iowa; also business card of Traer Brothers, bankers, Vinton, Iowa; I received these in February, 1876; also statement received in a letter — J. L. Bever, at the foot of which is a writing addressed to said Bever signed by J. W. Traer, for trustees; the same marked Exhibits 1, 2, 3, and 4. I did not have any interview with J. W. Traer personally in respect to any shares in said company, to my recollection.

283 Int. 15. Did you ever have any interview with any person professing to act for said Traer in making statements and representations touching said stock and its value, and matters connected with said stock? If so, give the name of such person, and when and where such interviews occurred, and produce any and all papers then shown to you; and state, if you know, in whose handwriting said papers are, and state what such papers said.

A. I had interviews with persons professing to act for said Traer in making statements and representations touching said stock and its value, and matters connected with said stock. Said R. A. Southwick made such statements and representations, professing to make them at the request of said Traer. They were made on several occasions prior to the delivery of the assignment of said stock. The exact dates I cannot now give. Tnese interviews, I have no doubt, occurred in the county court-house in the city of New York, in the office of city chamberlain, which position I then and still hold. On one of such occasions said Southwick handed me a paper for my examination, which I now produce, marked Exhibit 5. Said paper is in the handwriting of said Southwick, excepting the words "practically worthless" on the margin, and "voided by terms of sub'n," and "worthless," and "loss deducted," which said Southwick stated were in the handwriting of said Traer. The words "Traer's handwriting," which occur in three places on said paper, and the words "this list of property," etc., on the left-hand corner of said sheet, are in another handwriting; I don't know whose. Said Southwick informed me that said Traer dictated and gave to him the statements and items of said paper, excepting said words written by said Traer, and said other words in handwritings I cannot state. Said paper is dated February 4, 1876. On receiving said paper from said Southwick, and after he had seen my counsel, he informed me that Mr. Traer told him if we wanted any references or to make inquiries he would refer me to James L. Bever, City National Bank, Cedar Rapids, Iowa, and Southwick showed me a letter to said Bever, signed in my name, trustee, etc., per Southwick, copy of which I now produce as Exhibit 6, and Southwick asked me if I approved that letter, saying it would be satisfactory to Mr. Traer. And
284 Southwick stated to me that Traer wished him to say that Mr. Bever knew all about the property, and would give me any information I asked. And on my approving the letter Southwick stated he would mail the same. Afterwards, in response to said letter, I received a letter, dated February 15, 1876, signed J. L. Bever, which I now produce as Exhibit 7, and also a statement endorsed in said letter, which I have produced. Said Armstrong made no statements or representations to me that I recollect of, either in respect to the value of the stock or matters connected therewith, unless in his letter of February 26, 1876, marked Exhibit 8. I am very sure he did not. When he called I had concluded to accept the offer of $1,200, and I merely received from Mr. Armstrong the pay and delivered the assignment.

(Defendants object to this answer, so far as it gives answers in con-

versations with Southwick, because there is no showing that he was the agent of Traer, and also move to strike out the memorandum annexed as an exhibit to Int. 15, except so much as is in Traer's handwriting, because it is not shown, except by hearsay, that Traer had anything to do with the paper, and because it shows that it has been tampered with since it was made, and it is not shown by whom, and because the exhibit and statements are not responsive to the question.)

Int. 16. If you say you made an assignment of fifty shares of stock in said company, state how you came to make the same.

A. I came to make an assignment of said fifty shares because of the representations and information respecting their value that I have already testified to, and because I was thereby induced to believe there was then no dividend payable or money to pay a dividend.

Int. 17. Had any representations been made to you or any information given to you before the execution and delivery of any assignment such as has already been enquired about, in respect to the trustees of said Construction Company having collected any moneys from the assets of said company, or having in their hands moneys to enable them to declare a dividend to stockholders; and, if so, state the same fully, and by whom made or given.

285 A. Not any, except as to the dividend of $200. I was informed by Traer's letters that the trustees had no money on hand to make another dividend, and that only a small dividend more of $8 to $12 per share in small installments would probably be realized ultimately from the odds and ends constituting the company's assets.

Int. 18. If you say you made an assignment of fifty shares, such as is enquired about, were you or were you not induced to make same by said written letters, statements, memoranda signed by J. W. Traer?

A. I was.

Int 19. At the time of making and delivering any assignment, such as has been enquired about, did you or did you not believe that the only money that the stock therein named would be entitled to would be what the trustee of said Construction Company would be thereafter able to collect out of odds and ends in the shape of assets belonging to said company?

A. At the time enquired about I did believe that the only money said stock would be entitled to would be what the trustee of said company would be thereafter able to collect out of odds and ends in the shape of assets belonging to said company.

Int. 20. At the time of making and delivering of such assignment, as have been enquired about, did you have any knowledge or information that the trustees of said company had on hand money from the assets of said company on which they were ready or would soon be ready to declare a dividend to stockholders?

A. At said time I had no knowledge or information that there was money on hand or soon would be on hand from the assets of said company to pay a dividend to stockholders.

Int. 21. On or about February 7, 1876, at the suggestion of J. W. Traer, did you cause a letter to be written to James L. Bever, of Cedar Rapids, Iowa? If yea, produce copy of said letter, and if you received any reply to such letter produce the same.

A. At the suggestion of J. W. Traer I did cause a letter to be written to James L. Bever about February 7th, 1876. I here
286 produce copy of same as Exhibit 6. I received a reply to said letter, which I have produced as Exhibit 7.

Int. 22. Produce any writings or memoranda in you possession as trustee of Clews & Co., made by said Southwick, in the course of his employment by you in respect to said 50 shares of stock already inquired about, and in respect to the assets of said Construction Company, and any other writings or memoranda in your possession as said trustee in relation to said matter.

A. I produce herewith writings and memoranda in my possession as trustee of Henry Clews, made by said Southwick in the course of his said employment, as follows: 1. Paper dated February 3rd, 1876, signed R. A. Southwick, marked Exhibit 9; also, copy of letter, heretofore produced, of J. W. Traer to me, dated February 14th, 1876, in Southwick's handwriting. I cannot find the original, after diligent search. The memorandum-book kept by Mr. Southwick is a private paper that I need as trustee, and I am unwilling to have it attached to this deposition and taken from my possession for any length of time. Exhibit No. 9 I have compared with said book, and find it a correct copy down to February 13, 1876. It was part of Mr. Southwick's duty, while in my employ, to keep such book and make therein said record. The remainder of Exhibit 9, relating after February 13, 1876, I do not find recorded by Mr. Southwick in his memorandum-book, but I find a paper in his handwriting, of which Exhibit 9, from and including February 13, 1876, is a correct copy. I have already produced statement written in pencil in the handwriting of said Southwick, excepting certain words, to wit, the words "practically worthless," and "voided by terms of sub'n," which I believe to be in the handwriting of said Traer. And, also, the words "Traer's handwriting," in three places; and also the sentence in the left-hand lower corner, commencing, "this list of property," in somebody's handwriting I do not recognize, which paper is marked Exhibit 5, January 12, 1880.

(Defendants object as immaterial, irrelevant, and hearsay, and that Exhibit 9 is not verified, and is not a copy of any book authorized by law to be given in evidence, nor an entry of a deceased person against his interest; also move to strike out Exhibit 5 for same reasons.)

287 Int. 23. State whether or not you ever sold any declared but unpaid dividends belonging to yourself, as trustee of Henry Clews or otherwise, that had been declared but not paid on account of stock in said company.

(Defendants object, as immaterial, incompetent, and foreign to the issues, and that the assignment is the best evidence, and cannot be changed or varied by parol.)

A. I never did, excepting to Henry Clews.

Int. 24. If you say you did assign and deliver to James Armstrong any stock in said Construction Company, state all that was said to you by him at said time.

A. I cannot recollect exactly what was said. The substance, however, of all that was said was that he came to me, saying he had a check for the shares. Thereupon I delivered him the certificate and received the check.

Int. 25. State whether, in the delivery to James Armstrong of any assignment of stock in said company, you stated or did not state, literally or in effect, that such assignment included declared and unpaid dividends on such stock.

A. I did not state at any time or in any way that said assignment included declared and unpaid dividends on said stock.

Int. 26. Did James Armstrong or any other person ever inform you whether there were were any declared and unpaid dividends on the stock of said Construction Company? If so, state who so informed you, and when and where, and what was said.

(Defendants object, as immaterial.)

A. Never.

Int. 27. Were you or were you not informed that a dividend of $200, said to have been paid in February, 1876, included all the dividends that had been declared on said 50 shares of stock, or that shares were entitled to at the time of any transfer by you of same in March, 1876?

A. I was so informed.

(Defendants object, as immaterial and hearsay; he don't say who informed him; and as incompetent.)

Int. 28. When did you first learn of the existence of any
288 dividends declared on said 50 shares?

A. In the month of February, 1877. Cannot give the exact date.

Int. 29. When did you first learn of the conversion of said dividends by said Traer or by Traer and the other defendant, and when and where and by whom did you make demand upon Traer or Traer and the other defendants for them?

A. I first learned of said conversion in February, 1877. I directed my attorneys to do what was necessary, and I understood from them a demand was made by their request by Clark & Lynch. I authorized Mr. Clews to take such steps against said defendants, or any persons converting said dividends, that he might deem proper.

(Objected to, as immaterial and incompetent, and both interrogatory and answer assume a conversion of dividends by defendants; and the answer is a conclusion generally, giving no facts, and because said answer is largely hearsay.)

Int. 30. State the exact amount of said dividends, if you know, at the time of the conversion, and approximately, if you do not state exactly.

A. I have no personal knowledge of the amount of said dividends. Southwick and Clews told me he was informed said dividends amounted to about $10,000.

A. I think of nothing further that may tend to the benefit and advantage of plaintiff, except I received a letter from said Traer, dated March 7, 1876, and wrote him one February 18, 1876, of which I produce a copy, as well as said Traer's letter, same marked Exhibit 9 and 10.

Cross-examination:

Int. 1. Plaintiff Henry Clews claims to maintain this action upon a certain assignment of paper purporting to be executed by you, and purporting to relate to the stock mentioned in the direct interrogatories, and rights connected therewith; if you executed such assignment or paper, when, where, and to whom did you execute or deliver the same? Was it executed in blank, or was the name of the assignee filled in?

289 A. I executed such an assignment December 6th, 1877, and acknowledged it before a notary public on the 14th day of December, 1877. I delivered the same to Henry Clews on or shortly after December 14, 1877; I believe, however, on that very day. It was not executed in blank. The name of Henry Clews as assignee was filled in at the time it was delivered to him as well as when it was signed by me.

Int. 2. What consideration, if any, was paid to you for the assignment of paper referred to in the last interrogatory, under which plaintiff claims in this action? When, where, and by whom was such consideration paid to you?

A. I produce a copy of said assignment. I believe a dollar in money was paid by Henry Clews. There were also other considerations for the assignment in the shape of a bond or obligation from said Clews house; said consideration paid in New York city at the time of the assignment.

Int. 3. Do your accounts or reports as trustee of the estate of Henry Clews and Henry Clews & Co. show anything as to the consideration paid for said assignment or paper mentioned in Cross-int. 1 above? If so, annex to your answer to this interrogatory properly marked copies of all such accounts or reports so far as they show what said consideration was. If you say that your reports or accounts as said trustee show no consideration received by you for such assignment or paper, state the reason, if any, why they are silent in relation to it.

A. I do not recollect whether they do or not. I made reports from time to time to the committee of creditors, very often verbally, and this bond or obligation was, as I recollect it, so reported. My accounts and reports I have no doubt are silent in respect to said bond and obligation because I have received no money as yet in account of same, and I cannot conveniently take my time to look over my accounts in respect to said one dollar.

Int. 4. If you say that said assignment or paper was executed in connection with the sale, assignment, or transfer of any other prop-

erty, rights, or rights in action, state fully the whole transaction, what it included and what consideration you received for the whole property, rights, or rights in action, sold and transferred at
290 the same time. Also state when, where, and to whom such sale or transfer was made and whether your accounts and reports as trustee show anything in relation to said transaction and the consideration received by you therefrom. If so, annex copies of all such accounts and reports so far as they relate to said transaction and consideration. If your accounts and reports as trustee show nothing in relation to such transaction and consideration, state why they are silent in relation to it.

A. The assignment shows for itself what it included, and I refer to the copy thereof I have already produced. I believe the dollar therein referred to was paid to Mr. Southwick, and a bond or obligation was given as part consideration, on which I have received no money as yet. Said transfer was made on or about February 14, 1877, to Henry Clews. I do not recollect whether my accounts or reports show anything in relation to such transaction and the consideration received. I cannot conveniently take time to run through my accounts to see if said dollar is named or to get a copy of my accounts in that respect. My reports were made to the committee of creditors and were generally verbal, excepting when Mr. Southwick would read letters and papers to the committee whose approval I generally obtained in respect to any matter connected with the estate. My accounts do not show anything about said bond or obligation, because no money has been received on account of same yet.

Int. 5. If in answer to the direct interrogatories you have stated that you made any demands upon the defendant Traer, or Traer and the other defendants, for the alleged conversion of dividends earned by the 50 shares of stock mentioned in the direct interrogatories, now state if you have any personal knowledge whatever in relation to any such demands.

A. I have no personal knowledge in relation to any demand, except as before stated.

Int. 6. If in your answers to the direct interrogaiories you have undertaken to state the amount of such dividends, either exactly or approximately, now state whether you have any personal knowledge whatever as to the amount of said dividends; and if you claim that you have, state fully and specifically how you acquired such knowledge.

291 A. I have no personal knowledge in respect to such dividend.

Subscribed & sworn to Jan. 12, 1880.

At the time of filing the cross-interrogatories for the foregoing deposition the defendants filed the following:

Exceptions to Plaintiff's Interrogatories.

1. To the 5th, 6th, and 7th of said interrogatories, and each of

them, because immaterial, and incompetent, and foreign to the issues.

2. To the 9th of said interrogatories, so far as the witness is asked to describe a paper therein mentioned, because immaterial and incompetent, and because such paper itself is the best evidence.

3. To the 10th of said interrogatories, because immaterial, incompetent, and foreign to the issues, and because so general, vague, and indefinite that it is impossible for defendants to know what is sought to be elicited thereby or to cross-examine the witness touching the same.

4. To the 11th of said interrogatories, because immaterial, incompetent, and foreign to the issues, and because the instrument itself is the best evidence of what it contained; there is no dispute or issue as to the contents of the paper, and the witness cannot be permitted to state what the contents were.

5. To the 15th of said interrogatories, because immaterial, incompetent, and foreign to the issues, and because calling for matter of hearsay.

6. To the 16th of said interrogatories, because immaterial, incompetent, and foreign to the issues, and because it calls for no matter of fact.

7. To the 17th of said interrogatories, because immaterial, incompetent, and calling for matter of hearsay.

8. To the 18th of said interrogatories, because immaterial, incompetent, and calling for no matter of fact.

9. To the 19th, 20th, and 21st of said interrogatories, and
292 each of them, because defendants believe same to be immaterial, incompetent, and foreign to the issues, and because the plaintiff has not furnished defendants with a legible copy of said interrogatories, or any of them, and they are without means of cross-examining in relation to the same.

10. To the 22d of said interrogatories, because immaterial, incompetent, and foreign to the issues, and because calling for memoranda and papers in no way verified or shown to be correct by the party or parties making them.

11. To the 23d of said interrogatories, because immaterial and incompetent, and because the assignment executed by the witness is the best evidence as to what he thereby sold, and said assignment cannot be changed or contradicted by parol, no issue being raised by the pleadings in relation to it.

12. To the 24th of said interrogatories, because immaterial and incompetent.

13. To the 25th of said interrogatories, because immaterial and incompetent, and because the effect of the assignment can neither be enlarged nor limited by anything said by the witness at the time he delivered it.

14. To the 26th of said interrogatories, because immaterial and incompetent.

15. To the 27th of said interrogatories, because immaterial and incompetent, and because it is not sought to be shown that any of the defendants made the statements therein referred to.

16. To the 28th, 29th, and 30th of said interrogatories, and each of them, because immaterial, incompetent, and foreign to the issues, and because calling for matter of hearsay.

Deposition of Henry Clews.

Commission issued May 27, '79.

My age is forty years and upwards; residence, New York city; occupation, banker. I knew the C. R. N. W. Cons. Co. at and about the time of its organization and afterwards. Its business was rail-
road building. Its officers and managing agents were John
293 W. Traer, John F. Ely, William Greene, D. W. C. Rowley. I don't recall any others. I held fifty shares of the capital stock of said company from about the time of its organization until I was put into bankruptcy in the latter part of 1874.

Int. 5. If you state you were a stockholder in said company, state how and when you became such stockholder, and the quantity of stock in said company held or owned by you.

A. I became a stockholder in said company in the year 1870, I think, and at the solicitation of Hon. George Greene. I paid money for the stock—about $30,000 or upwards. I generally paid in installments, paying drafts usually drawn by said Rowley on me. I produce twenty-nine of said drafts that I paid, and also have drafts for the rest of said amount or nearly that. Said twenty-nine drafts are marked Exhibits A 1 to A 29. I held fifty shares of said stock. I have known said Traer about ten years; first knew him some ten years ago in connection with the B., C. R. & M. R'y Co.

Int. 7. If you say you were a stockholder in said company to the amount of fifty shares, state whether you ever had any conversation with said J. W. Traer in regard to said fifty shares.

A. I had such conversation with said Traer.

Int. 8. If you say you had such conversation with Traer, state when and where the same occurred. State the same fully.

A. These conversations occurred on two days early in October, 1875, at the office of Prentice Brothers, No. 10 Wall street, New York city, where I then had my desk-room. At the first conversation said Traer stated he had been made trustee of the C. R. N. W. Cons. Co., then in liquidation, and was winding up its affairs. I asked if said company had declared any dividends, and he replied, it never had, but that there was some money on hand to pay a small dividend. I asked him what my fifty shares would be entitled to. After making apparently some careful calculations in pencil, he said the dividend on my fifty shares would at most come to about $200, and that the remaining assets were odds and ends of no particular value, and that it would take a long time to dispose of them. I asked what my shares would ultimately receive. He replied he
thought about $1,000 to $1,200 after settling up everything,
294 but that it would take a long time before the amount was realized. He said he would give me $750 for my fifty shares of stock, because if he owned it himself it would facilitate his winding up the affairs of the company, and that for that reason he had

already bought several other interests, but at much loss. I told him the shares belonged to my estate in bankruptcy, and that I could not legally make the sale. He said: I have looked over your schedules, and they do not set forth the shares, and therefore, he said, my trustees and creditors need not know. He said he would either buy the fifty shares, or take it on joint account with me, and divide with me what the shares would produce. I advise you to hide it from your creditors and trustee, he said; I advise you to make an assignment of the fifty shares to some friend, and asked if Mr. Prentice was not my friend. I said yes. Then Traer said: "Well, make the assignment to Mr. Prentice, and date it back before your adjudication in bankruptcy." Said Traer voluntarily then and there drew up a rough draft of the necessary assignment, and handed it to me and said: Have it copied, sign it, and send it to Mr. Howard at Chicago, whose full name and address Traer then gave me. I have forgotten Howard's full name. He said Howard was a friend of his and a reliable lawyer, and that he would call on Howard on his way home, and get Howard to go to Cedar Rapids and file the assignment. I told Traer I would think it over. Traer left, saying he would call again the next day. The next day he did call, and I told him I had been too busy to attend to it. He said he had to leave town that day, and he asked me to write to him, and said he hoped I would send the assignment to Howard without delay. I have stated the substance of all the conversations enquired about. I regarded Traer's proposition a fraudulent one, and never for a moment intended to entertain it.

(Defendant objects to this Int. and answer. The statement of a third party to a contract is not admissible. There is no pretence that Mr. Traer authorized Clews to make a statement.)

Int. 9. What, if anything, did Traer tell you of his connection with said company? State fully.

A. He said that he was appointed a trustee to wind up the affairs said company.

Int. 10. What, if anything, did Traer tell you as to the
295 financial condition of said company? State fully.

A. He said the company had money on hand sufficient to pay only a small dividend, and that my shares would, together, at that time, be entitled to a dividend of $200; that the rest of the assets of the company were odds and ends of uncertain value that could not be turned into money, except after a long time, and that ultimately he thought my fifty shares would not realize or receive more than from about $1,000 to $1,200.

Int. 11. What, if anything, did Traer tell you as to what would probably be realized from the assets of said company. State fully?

A. He said not more than from about $1,000 to $1,200 would be realized on said fifty shares of stock; he said nothing to me further than that as to what the company's assets would realize.

Int. 12. What, if anything, did Traer tell you as to what could be realized from the fifty shares of stock? State fully.

A. He said that my fifty shares would not realize over $1,000 to $1,200.

Int. 13. Did Traer say anything to you as to his purchasing said fifty shares of stock? If so, state what; state fully conversation with him in regard thereto.

A. He said he would give me $750 for the fifty shares, as it would facilitate him in winding up the company, and that he had bought out several other persons at a less figure; I said the shares belonged to my trustee in bankruptcy, and he said my schedules did not show these shares, and therefore I could sell them without my trustee and creditors knowing it; and he said I had better hide it from them and make out an assignment of the shares to some friend and antedate it before my adjudication in bankruptcy; and he drafted an assignment, first asking if Mr. Prentice was not my friend, and being told by me that he was, Traer then told me to have the assignment copied and sent to Mr. Howard, an attorney at Chicago, and he said he would call on Mr. Howard on his way home and get him to take it to Cedar Rapids to be recorded; Mr. Traer told me
296 he had to leave town that day and wished me to write to him, and said he hoped I would send the assignment to Howard without delay; I should have said Traer offered to divide with me what would come from the fifty shares, I putting up the shares against his services.

Int. 14. State what, if anything, Traer did in respect to drawing up any contract or proposed contract for the purchase of said fifty shares of stock? State fully.

A. He drew up an assignment of said shares for me to execute, and gave me instructions how to have the assignment made available to him.

Int. 15. If you say Traer did write or prepare any proposed contract or memorandum for the purchase of said fifty shares of stock, annex the same to answer to this question.

A. I cannot; I have not got it.

Int. 16. Did you have any written correspondence with said Traer or either of the other defendants in regard to the purchase of said fifty shares of stock? If yea, annex the same to answer to this question, and state when the same was sent and received, so far as you know.

A. I received a letter from said Traer, dated November 8, 1875, and one from said Greene, dated April 24, 1877, in due course of mail, and I answered Mr. Traer's letter November 13, 1875. I produce said letters of Traer and Greene, and copy of my letter, as Exhibits B, C, and D.

Int. 17. Do you know the handwriting of said J. W. Traer? If yea, state how you know it.

A. I saw him draft an assignment, and I know it from the letter from him I received.

Int. 18. If you say you know said Traer's handwriting, designate of any writings annexed to this deposition or any writings shown you which are in the handwriting of said Traer, and state when the same were written by him, so far as you know?

A. The letter of said Traer I have produced I designate as signed by said Traer; the said signature and letter were written, so far as I know, on the date of said letter, November 8, 1875; a paper is now shown me, addressed to J. Nelson Tappan, dated February 4,
297 1876, and signed J. W. Traer, trustee, and marked Exhibit No. 1, is in said Traer's handwriting. Also another paper is shown, which is in Traer's handwriting, and is marked No. 2. Also a business card having on the back J. W. T., in his handwriting, marked No. 3. Also a paper in pencil containing writing of said Traer, namely, the words, "practically worthless," and "voided by terms of subscription," and "worthless and loss deducted," which is marked Exhibit 4.

Int. 19. Do you know James Armstrong, of New York city? If so, how long have you known him?

A. Yes; I have known said Armstrong since February 28, 1877.

Int. 20. If you say you know said Armstrong, state when you became acquainted with him, and how.

A. I became acquainted with him February 28, 1877, and introduced myself to him.

Int. 21. Did you ever, previous to this suit, have any conversation with said Armstrong in respect to the purchase by him of said fifty shares of stock? If yea, state when and where the same occurred. State the same fully, and also whom said Armstrong represented or was acting for, if you know.

A. I did. Such conversation occurred February 28, 1877, when I called upon him in this city. I inquired of him if he knew when Mr. Traer was to be in the city again. Mr. Armstrong said he had received a letter recently from Mr. Traer, saying he was soon coming to New York. He suggested writing Mr. Traer if I desired him to do so, and asking him when he would be here. I requested him to do so, but not to mention my name in connection with it. Mr. Armstrong said he would not. Mr. Armstrong promised to let me know when Traer arrived. I told Mr. Armstrong I wanted to see Traer about the fifty shares C. R. N. W. Cons. Co. stock which had been bought from my estate. Mr. Armstrong said he only acted as agent in the matter for J. W. Traer, and went to the trustees' office, as directed, and paid the $1,200 for the fifty shares construction stock. He knew nothing about its value or what it represented. His only interest was his fee, which he charged and received. I called again upon Mr. Armstrong about the middle of March,
298 1877. I asked him if he had received a reply from Mr. Traer. He said he had not. I told him proceedings were going to be brought against Traer for obtaining $10,000 fraudulently, under cover of the C. R. N. W. Cons. Co. stock obtained from my estate, and I wanted to know what his (Armstrong's) connection was therewith. Mr. Armstrong said he never had any personal interest himself in the purchase of the fifty shares of stock. He merely executed the order received from his client, J. W. Traer, of Cedar Rapids, and he said he only carried out his directions. Traer instructed him to go to the trustees' office and pay $1,200 for the fifty shares of stock. He knew nothing about its value or what it represented, excepting

that he knew Traer had furnished the trustee a full list of the property which Traer claimed the stock represented, and he considered the trustee, J. Nelson Tappan, was influenced to sell the fifty shares of stock by Traer's representation as to its value and from the list of assets furnished by him, and not from any influence of his, for he made no representations to Mr. Tappan. He said Mr. Traer, on his return to Cedar Rapids, sent him the original certificate of fifty shares of stock made out in the name of Henry Clews. On its receipt he took it to the office of the trustee and found Mr. Southwick there; he and Mr. Armstrong went to call upon J. Nelson Tappan with it, and Mr. Tappan signed the printed form of transfer which was on the back of the certificate. He forwarded the certificate direct to J. W. Traer, Cedar Rapids. I asked him if he knew a Mr. Howard, of Chicago. He said he did not. I said Mr. Howard went to Cedar Rapids and obtained the $10,000. He said he had no connection with Mr. Howard, of Chicago, in the matter. What he did was for Mr. Traer alone, and in his behalf. He expressed a willingness to tell all he knew when called upon under a legal process. He reiterated that he most positively had no interest, in any shape, manner, or form, in the purchase of the stock, excepting to the extent of his fees, which I think he said were about $600. Mr. Armstrong said he understood the fifty shares of stock to represent the list of assets given to the trustee and in Traer's hands, and knew nothing himself about the value of the stock, or that there were any back dividends connected with the stock. Mr. Armstrong said, "You are still in bankruptcy, are you not?" I said I was. He said
299 "If you received this money from Traer, it won't do you any good; it will go to your creditors." He said, "You don't want to turn a public informer and not get anything for it." He said, "We can manage it together so as to make something out of it." I said it was an outrageous steal on the part of Traer, and I would make him disgorge.

(Defendants object, as immaterial, incompetent, foreign to the issues, and hearsay. It purports to give a conversation in 1879, and the stock was purchased in 1876.)

Int. 22. Do you know J. Nelson Tappan, of New York city; and if so, how long have you known him, and what, if any, business relations existed between him and you at the time or times of any of the conversation or conversations in respect to the transfer of said fifty shares of stock mentioned by you?

A. I do know said J. Nelson Tappan; have known him about ten years. He was my trustee in bankruptcy at the times of said conversation. There were no other business transactions between us.

Int. 23. State what, if anything, you know of the transfer of said 50 shares of stock by said J. Nelson Tappan. State fully.

A. I was at the time advised of the transfer of said 50 shares by said J. Nelson Tappan. I was also about the same time shown letters and statements of said Traer to said Tappan in respect to said 50 shares of stock and the condition of said Construction Company. I also had conversation about the same time with Mr. South-

wick, Mr. Tappan's clerk and assistant, immediately after the transfer. Mr. Southwick then informed me that Mr. Tappan had signed the stock certificate in blank; that Armstrong told him that he, Armstrong, had taken the assignment of the stock for Mr. Traer.

(Defendants object, as immaterial, incompetent, and hearsay.)

Int. 24. Up to the time of the transfer of said 50 shares of stock by said Tappan as your trustee in bankruptcy, what knowledge or information had you or said Tappan, so far as you know, in respect to the financial condition of said Construction Company, of the amount and value of its assets and of the value of its stock? State fully.

300 A. Up to the time of the transfer of the said 50 shares of stock by said Tappan as my trustee in bankruptcy, I had no knowledge or information in respect to the financial condition of said Construction Company except the statements of the said Traer, made to me in our conversations in October, 1875, at the office of Prentice Bros., No. 10 Wall street, New York city, when said Traer stated to me that he had been made trustee of the C. R. N. W. Construction Company, then in liquidation, and was winding up its affairs, and that there was some money on hand to pay a small dividend, and that the dividend on my 50 shares would be only about $200, and that the remaining assets of the company were some odds and ends of no particular value, and that it would take a long time to dispose of them, and that he thought my 50 shares would ultimately realize me about $1,000 to $1,200 after settling up everything, and that it would take a long time before that amount was realized. He said he would give me $750 for my 50 shares because it would help him in winding up the affairs of the company. I was then informed by said Traer in substance that the affairs of the company were in such an involved condition and its assets so small that $750 was all my said 50 shares of stock were worth. At the time of said transfer of stock I had also seen the letters and written statements of Traer to Tappan in respect to said 50 shares of stock and in respect to the financial condition of said Construction Company. All the knowledge or information I had of the financial condition of said company and the amount and value of its assets were the statements and representations made by Traer to me and to Mr. Tappan and his clerk, Mr. Southwick. Mr. Southwick had made to him statements in regard to said company and its assets, similar to the said statements made by Traer to me up to the time of the transfer of said stock by Tappan. Mr. Tappan had no knowledge or information, so far as I know, in respect to said company or the amount and value of its assets, except from Traer, said letters and statements to him and his clerk, Southwick, and a letter to him from Mr. Beaver February 15, 1876, and a statement therein contained signed by said Traer for trustees. I had also informed Mr. Tappan of said Traer's statements to me in respect to my said 50 shares of stock and the condition of said company.

301 (Defendants object; so far as the knowledge of the witness goes, it is hearsay, and it is incompetent and immaterial.)

Int. 25. Previous to such transfer of said stock by said Tappan, what knowledge or information had you or said Tappan, so far as you know, in regard to any dividends or profits earned by said 50 shares of stock, and when you and said Tappan had the first intimation of the existence of such dividends and how?

(Same objection, as to int. 24.)

A. Previous to such transfer of such stock by said Tappan, and during the month of October, 1875, I was informed by said Traer that all the "dividends" which had been earned by or which had accrued on my said 50 shares of stock was about $200, and at the time of the transfer of said stock by Tappan I had been informed that said $200 dividends had been paid by said Traer to Tappan. I never knew or was informed or believed until after the transfer of said 50 shares of stock by Tappan that any dividends or earnings had accrued on said 50 shares except said $200. Tappan and I, previous to the transfer by him of said stock, had no knowledge or information, so far as I know, of any dividends on account of said 50 shares, except $200.

Int. 26. What means had you or said Tappan of knowing of the financial condition of said Construction Company, or of the amount or value of its assets or of the value of stock or of its business affairs and condition? State fully.

(Same objection, as to int. 25.)

A. No means that I am aware of excepting through said Traer.

Int. 27. What, if anything, was done or omitted to be done by defendants, or either of them, to conceal from you or your trustee, Tappan, the actual financial condition of said C. R. N. W. Construction Company or the amount and value of its assets or the accruing or earning of any dividends or profits on its capital stock, or of its business affairs or operations?

(Defendants make same objection and as simply a conclusion.)

A. The defendants neglected to inform me or said Tappan
302 of the actual financial condition of said Construction Company, or of the amount and value of its assets and the accruing or earning of any dividends or profits on its capital stock, except as to said $200, and excepting said representations to me and said Tappan, and they had always kept concealed from me and Tappan any dividends excepting said $200.

Int. 28. State if you know what induced the said transfer of said 50 shares of stock by said Tappan.

(Defendants object, and question withdrawn by plaintiff.)

A. So far as I know and believe, said letter and statements and representations made to said Tappan induced said transfer.

Int. 29. State whether or not you have ever received from said Tappan any transfer of said 50 shares of stock or of any dividends or profits earned thereby or accrued, or of any rights in respect to said stock, dividends, or earnings. If yea, state when and how, and if such transfer be in writing annex the same to this answer.

A. I have received such transfer. It was made on or about the day of its date, in writing, and I produce the same as Exhibit E.

Int. 30. State what is your right or interest to or in respect to any dividends or profits pertaining to the same or to any damages or claims for any wrongful conversion or appropriation of said stock or dividends by said Traer or by said Traer and the other defendants.

(Objected to, as immaterial, incompetent, and because the assignment is the best evidence as to what his rights are.)

A. The right given me by said assignment, which I understand to be all of the dividends belonging to said stock, and all the rights attaching to said 50 shares of stock or that ever did attach, excepting said dividend of $200.

Int. 31. What was the date of adjudication of bankruptcy of Henry Clews & Co., and Henry Clews individually, and what was the date of the discharge of said Henry Clews in bankruptcy?

A. Adjudication, November 28th, 1874; discharge, December 24th, 1875.

303 Int. 32. What representations touching the value of said 50 shares of stock or the assets of said Construction Co. were made to R. A. Southwick, clerk to said Tappan, by said Traer? State, if you know, as well also the present whereabouts of said Southwick.

(Defendants object.)

A. Substantially the same as to me. Southwick showed me a memorandum of the assets, etc., of said company, with some pencilling of Traer, which memoranda Southwick said he made from Traer's dictation. It is the same paper that has already been shown me, marked Exhibit 4; also said statement from Bever produced. Southwick is not living.

I know of nothing more now concerning the matters in question that may tend to the benefit and advantage of the plaintiff.

Cross-examination:

Int. 1. If in answer to direct interrogatory 29 you have produced any assignment or paper from J. Nelson Tappan, trustee, etc., relating to the stock or rights in controversy, now state when, where, and from whom you received such assignment or paper, who procured it from Tappan for you; was such assignment or paper delivered by Tappan with the name of the assignee in blank, or was it filled up at the time of delivery? What did you pay for said assignment or paper? When, where, and in what manner did you pay it? What other right or interest did Tappan sell, assign, or make over to you, or any other person acting for you, or any person from whom you received said assignment or paper at the time he made said assignment or paper, and what consideration was paid for the whole, if more than this assignment or paper was included in the transaction? When, where, how, and in what manner was such consideration paid?

A. I have produced such assignment. I received it at or about

its date in New York city. From said Tappan I procured it. The name of the assignee was filled up at the time of delivery. I paid a dollar for said assignment and a certain bond at the same time and place of my receiving the assignment. I paid the dollar in
304 money and executed and delivered the bond. Tappan sold me no other right or interest.

Int. 2. When and of whom did you learn of the accrued dividends on the stock mentioned in the direct interrogatories, which you seek to recover in this action? Was it before or after you received the assignment or paper executed by J. Nelson Tappan, trustee, etc., upon which you base your right of action? What information did you give said Tappan as to said dividends prior to the time when said assignment or paper was executed?

A. I learned of such accrued dividends about February 1st, 1877, of Gen. E. F. Winslow, and before I received said assignment, and I told Tappan before receiving said assignment that Traer had collected or caused to be collected said dividends.

Subscribed and sworn to Jan. 12, 1880.

The foregoing depositions of Tappan & Clews filed Jan. 15, '80.

At the time of filing the cross-interrogatories for the foregoing deposition the defendants filed the following:

Exceptions to Plaintiff's Interrogatories.

1. To the 5th of said interrogatories, because immaterial and incompetent, and because the certificate of stock or the records of the company are the best evidence.

2. To the 7th of said Ints., because immaterial, incompetent, and foreign to the issues in this cause, and because the pleadings herein show that the witness had no interest in the stock in controversy or dividends earned by the same, and that said stock was not purchased of or from the witness, but of and from J. Nelson Tappan, who claimed in hostility to the witness.

3. To the 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, and 17th, and to each of said Ints., for the same reason as to the 7th Int.

4. To the 18th of said Ints., for the same reasons as to the 7th Int., and for the further reason that said Int. is so vague, general, and indefinite that it deprives defendants of their rights of cross-examination touching the matters sought to be elicited by said Int.

5. To the 19th and 20th of said Ints., and each of them, for the same reason and as to the 7th Int.

305 6. To the 21st of said Ints., for the same reasons as to the 7th Int., and because said Int. calls for the statements of one Armstrong, which are mere hearsay.

7. To the 22d of said Ints., because immaterial, incompetent, and foreign to the issues.

8. To the 23d, 24th, 25th, and 26th of said Ints., and each of them, for the same reasons as to the 7th Int., and for the further reason that they call for matters of hearsay, and matters resting wholly within the knowledge of J. Nelson Tappan, as to which no witness but the said Tappan himself can speak.

9. To the 27th of said Ints., for the same reasons as to the 7th Int., and also because the same calls for matters of hearsay, for the conclusions and arguments of the witness, and for the assumption on the part of the witness of the motives and intention with which the defendants did or omitted certain acts; and because the same is too vague, general, and indefinite to give the defendants the right of cross-examination, to which they are entitled, touching the matters which may be elicited in answer to said Int.

10. To the 28th of said Ints., for the same reasons as to the 7th Int., and further, because the same calls for matter of hearsay and for a statement on the part of the witness of the personal motives and mental conclusions on the part of Tappan in the transfer of the stock referred to by said Int.

11. To the 29th and 30th of said Ints., and to each of them, because immaterial, incompetent, and foreign to the issues, and because the only claim of plaintiff to the matters in controversy in this suit is under a written assignment, which should be produced, and which must speak for itself; and because the witness is asked by said Ints., and each of them, to swear as a matter of law what his rights are under said written assignment, which question of law the defendants respectfully insist must be reserved to and decided by the court.

12. To the 31st of said Ints., because immaterial and incompetent, and because the record of a duly authenticated copy thereof is the best evidence.

306 13. To the 32d of said Ints., because immaterial, incompetent, and foreign to the issues, and because the same calls for matters of hearsay.

Deposition of P. Martel.

My age is 35 years; residence, Cedar Rapids; occupation, merchant. My position during the years 1874, 1875, and 1876 was assistant cashier of the Union Savings Bank, of Cedar Rapids, and after it was changed to the Union Bank I held the same position in that bank. I continued in that position up to August, 1878. I resided in Cedar Rapids. I have known J. W. Traer ever since 1872. Don't know as I made the acquaintance of his wife until 1873 or 1874. Don't recollect when I made the acquaintance of Clews, but I met him once. I know nothing in particular about the C. R. N. W. Cons. Co. and the business transacted by it prior and subsequent to its dissolution. They did their business there in the bank, and I was in the habit of receiving their deposits and paying their checks. I had no interest in the Construction Company at any time.

Int. 5. State whether at any time you were a party to any negotiations for the purchase of any of the stock of said Construction Company. If so, what steps were taken by you towards the purchase of said stock? If yea, state with whom such steps were taken.

(Defendants object, as immaterial, incompetent, and foreign to the issues.)

A. I did have such negotiations once with Wm. Greene. I once asked him to let me have five shares of that stock. His remark was that they would probably be forming new construction companies, and they afterwards formed the Muscatine Western Construction Company, and I got five shares of that.

Int. 6. State whether you ever had any conversations with J. W. Traer touching the purchase of any shares or interest in said Construction Company.

(Defendants make same objection.)

A. I did not.

307 Int. 7. I will ask still further whether you had any conversation with J. W. Traer with reference to said stock at any time?

(Defendants make same objection.)

A. Not to my recollection.

Int. 8. To refresh your recollection, I desire to call your attention to a letter purporting to have been written by J. W. Traer to J. Nelson Tappan, March 7, 1876, Exhibit 9 to Tappan's deposition. Examine such letter, and state whether it is in the handwriting of J. W. Traer or not, and whether such proposition as therein referred to was made by you at that time or thereabouts.

(Defendants make same objection. Witness is shown deposition of Tappan containing said Exhibit 9.)

A. As near as I can say, that is Mr. Traer's handwriting, but I never made any proposition of that kind to Mr. Traer.

Int. 9. State whether you ever made any proposition of any kind for that stock, or for any stock in said Construction Company, to J. W. Traer.

(Defendants make same objection.)

A. I did not.

Int. 10. If you did not make any such proposition personally to J. W. Traer, state whether you authorized any one to make any such proposition for you.

(Defendants make same objection.)

A. I never did authorize anybody to make any negotiations with J. Nelson Tappan on my part.

Int. 11. State whether or not you ever had any conversation with J. W. Traer in any manner looking towards the purchase of any stock or interest in said Construction Company.

(Defendants make same objection.)

A. Not to my recollection.

Deposition of Alla D. Traer. Taken Dec. 22, '79.

Am 43 years old; reside at Cedar Rapids; have resided here six years, I think. I am a party to this suit. Am not acquainted
308 with the plaintiff or his trustee, J. Nelson Tappan, at all. I never had any business transactions with them. I have not at any time purchased any stock in the C. R. N. W. Construction Company, standing in the name of Henry Clews, belonging to J. Nelson Tappan, his trustee. I authorized J. C. Traer, my attorney, to purchase such stock for me. It was fifty shares of stock in the C. R. N. W. Construction Company, standing in the name of Henry Clews. I am not able to state exactly when I made the purchase. I suppose the books will show. As regards circumstances, I don't know as there were any circumstances in particular in connection with it more than in any other business transaction. It came to my knowledge that this stock was for sale in a general business way, and through my husband partially, J. W. Traer. I can't say exactly at what time.

Int. 8. You state this came to your knowledge in a general business way. Please explain what you mean by this term in this connection.

(Defendants object; that the question is immaterial and incompetent, is simply asking for a definition of the King's English; the witness is not a dictionary.)

A. As any business matter comes to one's knowledge, through hearsay, of course.

Int. 9. From whom besides your husband did you learn that this stock was for sale?

A. I am unable to designate persons or any particular individual. I did not learn at the same time how much the stock could be purchased for. I have always since I have been a married woman had more or less of business transactions either here or elsewhere. As to what kind of business, I hardly know what term to use. I have simply been managing my own affairs. I am not in any mercantile business. I have found opportunities of changing my property to a good advantage. I have bought securities and made investments to my best advantage.

Int. 13. What securities have you usually dealt in?

(Defendants object, that it is immaterial, incompetent and foreign to the issues, and has nothing to do with any matter in
309 controversy. Defendants' counsel instructs the witness she need not answer the question.)

Int. 14. Have you at any time dealt in railroad, mining, or other stocks; if so, to what extent?

(Defendants make same objection.)

A. I have to some considerable extent.

Int. 15. In what stocks?

(Defendants make same objection.)

A. Railroad and bank stock.

Int. 16. In what railroad and what bank?

(Same objection.)

A. In B., C. R. & M. R'y Co., and in the Union Bank, of Cedar Rapids. I don't now recollect any other. Mr. Traer has had general management, under my supervision, of the property I had at the time of my marriage. J. C. Traer is an attorney, and my husband's brother. I authorized him to make the purchase of the stock in question because he has been my attorney in other business transactions. He is a partner of my husband in business at Vinton. I believe my husband is also an attorney-at-law.

Int. 21. You speak of J. C. Traer's acting as your attorney in other business transactions. Do you recollect any now?

(Defendants make same objection as to Int. 13.)

A. I don't know that I can just name any particular transaction. He has had full power of attorney, however, to transact business for me whenever it became necessary.

Int. 22. Did you employ J. C. Traer to do this business, or the firm of Traer Brothers?

A. J. C. Traer, attorney.

When I first learned that this stock was for sale I learned that it was not very valuable. My being already a large stockholder made it desirable for me to purchase it. I can't say just how long I had been a stockholder at that time, but for some considerable length of time.

310 Int. 26. Had you been a stockholder for a week, a month, or a year, or longer?

(Defendants make same objection as to Int. 13, and further that the evidence already shows. The question calls for what is evidenced by books and papers which are already in, and are the best evidence. Defendants' counsel instructs witness she need not answer the question.)

Int. 27. At the time the purchase was first suggested to you what estimate was made of its value?

A. I can't approximate the value that was placed upon it. I think I have already answered as to how I came to the conclusion to purchase. Being already quite a large stockholder, it became desirable to get the whole thing in my hands. We sometimes invest where we are not sure it is safe. It was after the closing up of the transaction that I first learned there was a large amount in dividends to the credit of the Clews stock. Can't say just how long after the purchase. It was not very long, however. I first learned it from J. C. Traer, my attorney. The amount was something like $11,000, something over I think. Can't give the exact figures. I was home when I learned this. Don't recollect how long it was after Mr. Howard came to Cedar Rapids. Don't recollect just the time Mr. Howard was here, but it was after his visit here. I met him for a few moments only when he was here. We had no conversation in regard to busi-

ness matters whatever; simply a social meeting. I did not understand that Mr. Howard was here on business of mine touching those dividends. I had no knowledge of Mr. Howard's business here. I first learned the object of his visit after the closing up of the business transactions, and it came about in a casual way. I first learned it through my attorney, of course, J. C. Traer. I paid between two and three thousand dollars for this stock. It cost me about three thousand dollars in all.

Int. 41. Please state the exact amount that you paid for the stock, and to whom you paid the money, and in what way?

(Defendants object; that the witness has shown that the stock was purchased by her agent. The questions call for hearsay. The agent who made the purchase is a competent witness.)

311 A. I can't give the exact amount in dollars and cents. It was paid for in funds of my own at the bank of Traer Brothers. It was paid to J. Nelson Tappan, I believe.

Int. 42. You say it cost you $3,000 in all. Explain what you mean "in all," and state, as nearly as you can, what you paid Tappan.

(Defendants make same objection.)

A. That the paper will have to show.

Int. 43. Do I understand that it never has come to your knowledge the exact amount you paid Tappan for that stock; that your agent has never reported the details of the transaction to you?

(Defendants object; that the witness cannot know what the learned counselor understands.)

A. He has, but I have not seen fit to charge my memory with the exact amount in dollars and cents. I have not the papers to which I refer in my possession, showing the details of this transaction. I cannot state what proportion of this $3,000 went to my agents or attorneys, if any. I simply designated a sum I was willing to pay for it, and it made no difference to me so long as it did not cost me more than that amount. I limited my agent, J. C. Traer, to the sum of $3,000 to purchase said stock. I authorized him to purchase the stock and the equities of the stock of whatsoever character. I suppose council understands the meaning of the term "equities of the stock," as it is frequently used in business transactions. I shall have to refer you to the dictionary. I mean all that the stock calls for—I mean all that I can get—dividends, or whatsoever else there is.

Int. 52. You have testified that you did not know of there being any dividends at the time of the purchase. Do I understand that you had in view these dividends at the time of the purchase?

A. How should I, when I didn't know of them?

I can't recollect when this certificate of 50 shares first came into my possession. I received it from my attorney, J. C. Traer. Am un-
312 able to say whether it was exactly at that time that he informed me of these $11,000 dividends. It was somewhere near the time, however. I have not the certificate with me. It is among my papers. Will produce it when it becomes necessary. I cannot pro-

duce the certificate. I haven't it with me, neither is it in my possession. It is in possession of my attorneys, Hubbard & Clark. I refuse to produce it for the purposes of this examination for inspection and copy.

(Defendant accepts service of notice to produce certificate of stock called for, but declines to produce it, as already stated.)

(Pl'ff asks commissioner to certify so much of the record herein as is necessary to show the service of notice to produce said certificate, and the refusal to produce same, to Hon. John McKean, judge of circuit court for 8th judicial district of Iowa, sitting in chambers, together with the files in the case, and to move the said judge for an order for the production of the said certificate.)

Cross-examination:

Int. 1. State whether you had personally anything to do with the purchase of the Clews stock and dividends in this suit in controversy after authorizing your attorney to make its purchase, and whether you had personal knowledge of the manner in which the negotiations were conducted or in which the dividends were collected.

A. I had not.

Int. 2. Did you have, or have you now, any personal knowledge as to what payments were made in the purchase of said stock and dividends, or what payments were made in the collections of the dividends?

A. I did not and have not.

Int. 3. Did you employ any other agent than J. C. Traer in the transaction of the business connected with the purchase of the stock and collection of the dividends?

A. I did not.

313 Int. 4. In your answer to direct Int. 16 you state that you have dealt in the stock of the B., C. R. & M. Railway Company and Union Bank of Cedar Rapids, and don't now recollect any other. Did you mean by this answer to indicate that you had not dealt in the stock of the Cedar Rapids & Northwestern Construction Company, of which this Clews stock forms a part?

A. I think I answered a question this morning in regard to being already a large stock owner in that company—the Construction Company—before the purchase of the Clews' stock.

Int. 5. Is it the fact that you had dealt in the stock of the Cedar Rapids & Northwestern Construction Company before the purchase of the Clews stock as indicated by your answer this morning?

A. It is.

Int. 6. Were you acquainted with Mr. Howard, of Chicago, before his visit to Cedar Rapids, mentioned in your direct examination; and, if so, where had you known him?

A. I was acquainted with him somewhat. Had known him at Newton, Iowa. I had visited him there.

Int. 7. Did you, at the time of the purchase of this Clews stock,

know what the assets of the Construction Company consisted of, or how much the indebtedness of the company was?

A. I had no knowledge as to what the assets consisted of except a hearsay knowledge. The indebtedness I understood to be considerable. I understood the assets of the Co. to be anywhere from one to five or six thousand dollars. It consisted of various property, as I understood—town property and odds and ends of all sorts.

Int. 8. Do you mean that you understood the entire assets on property of the company to be worth from one to six thousand dollars, or that you understood that portion which would go to the Clews stock to be worth that amount?

A. I understand you now. It was the portion to go to the Clews stock. As to the balance I couldn't form any idea.

Int. 9. State whether your husband, John W. Traer, had, at the time of the purchase of the Clews stock and dividends, or has now, any interest therein.

314 A. He had not then and has not now.

Int. 10. Has he at any time had any interest therein?

(Plaintiff objects; that it is not cross-examination.)

Ans. He has not.

Int. 11. When you authorized this purchase, and when the purchase was made for you, had you any knowledge as to what Clews or Tappan knew or did not know about the assets of the Construction Co., or dividends declared on the stock?

Ans. I had not. They had the same means of knowing, however, that I had.

Int. 12. Did you at any time before the purchase of the stock have any knowledge of any statements or representations made by your husband to Clews or Tappan in regard to the stock or the assets of the company; and did you in any manner authorize or employ him to make any representations in regard to these matters to either Clews or Tappan?

(Plaintiff objects, on the ground it is not proper cross-examination.)

Ans. I did not.

Int. 13. Did you at any time or in any manner combine or conspire with your husband, John W. Traer, to cheat or defraud either Clews or Tappan out of the dividends or assets of the company pertaining to or belonging to this stock?

(Plaintiff objects for same reason as to Int. last above.

Ans. I hardly know how I could when I did not know of any dividends. I did not.

Int. 14. Did your husband at any time make any proposition to you that you should allow your name to be used for the purposes indicated in the last question, or did you assent to any such proposition?

(Plaintiff makes same objection as to Cross-interrogatory 12.)

A. He did dot make any such proposition, consequently I could not assent.

Int. 15. Did you know when you purchased the stock, of his having had interviews with either Clews or Tappan in relation to it?

315 (Plaintiff makes same objection as to Cross-int. 12.)

Ans. I did not.

Redirect examination:

Int. —. You testify that you had been a large stockholder in the Construction Co. before the purchase of this stock, and had dealt in it. State whether you had owned before that time, or were the owner at that time, of stock in said company other than the stock purchased of Wm. Greene?

Ans. Yes, I think had other shares. I don't recollect at what time the other shares were purchased, or whether it was before or after. I can't say as to dates or the exact time. I cannot tell how long it was before the purchase of the Clews stock that I purchased the stock of Wm. Greene. The books and papers will show for themselves who purchased it and at what time. My husband acted as agent for the purchase of this stock. I am unable to say how many shares besides the Greene stock I had at the time of the purchase of Clews' interest. It did not need any one's suggestion for me to employ J. C. Traer to conduct the negotiations for the purchase of the Clews stock. I employed him of my own accord. My husband first suggested the purchasing of it. I cannot say whether he did or did not suggest that I employ Traer Bros. or J. C. Traer to make such purchase. There may have been some general conversation about it; I can't just recollect now. I know nothing of a pointed or direct nature about it. I suppose the records will show whether I finally became the sole stockholders of the C. R. N. W. Cons. Co.

Int. 8. Who conducted the negotiations for the purchase of all this stock or stock interest for you, except the Clews stock?

(Def'ts object, as immaterial, incompetent, and foreign to the issues.)

Ans. My husband, J. W. Traer. I employed J. C. Traer to purchase the Clews stock, for the reason that my husband was one of the trustees of the company, and to avoid feeling among other stockholders. The same reason did not obtain in other cases. There were various reasons why. I don't know that I can particularize.

316 Int. 12. You state that the assets of the company were from one to six thousand dollars, and afterwards limit it to that amount going to the Clews stock, as you understood. How did you arrive at this estimate?

Ans. I don't know that it should be called really an understanding of the matter. It was general hearsay. I shall have to refer the gentleman to the dictionary for the meaning of the word hear-

say. I derived my knowledge principally from my husband. I don't know that I can particularize as to what the indebtedness of the company consisted of. It was the general indebtedness.

Int. 15. In all of the purchases of stock and investments state whose judgment you acted upon and what information.

A. My husband's.

Defendants' Evidence.

Defendants introduce in evidence second deposition of J. W. Traer, being the same already introduced by plaintiff.

Deposition of D. W. C. Rowley.

The books of the Construction Company, kept by me as secretary, show that Henry Clews received $10,000 in bonds and $310,000 in stock of the B., C. R. & M. R'y Co., as dividends on his fifty shares of Construction Company stock. The dividends on stock appear to have been made in September and November, 1871, and in September, 1873, and the bonds in September, 1871. This is the way the books show. I believe that, as a matter of fact, stock and bond dividends were made by the company on its stock at those dates. The stock certificate book would show with exactness.

317 Int. 3. Do you recollect the fact of a bond dividend on the stock of the Construction Company; and, if so, what was the whole amount of bonds divided among the stockholders? By bonds I mean first mortgage bonds of the B., C. R. & M. R'y.

A. There were one hundred bonds divided of $1,000 each. I do not clearly remember, aside from my books, that the railway stock earned by the Construction Company under its contract for building the road was from time to time divided up among the stockholders of the Construction Company, in the form of stock dividends, so called. The books kept by me show Henry Clews charged with the amount of stock and bonds indicated by my former answer. I think in every case I delivered the said stock to some one for Henry Clews, taking receipt for same. The bonds I do not remember to have been delivered by myself; think they were delivered by Judge Greene, in New York. I think Henry Clews' stock also was delivered to Judge Greene.

Cross-examination:

The stock and bonds to which I have referred were distributed among the stockholders in proportion to the stock owned by each stockholder in the Construction Company. In speaking of these dividends declared I do not include any cash dividends, so called, made by the Construction Company.

Deposition of George Greene.

In September, 1871, I think there was a divided on Construction Company stock of first mortgage bonds of the B., C. R. & M. R'y of $100,000, equal to 20 per cent. on the amount of Construction Company stock held by the members, which would give to the Clews

stock $10,000. I am quite sure that I delivered the ten bonds to Henry Clews in person, being his share of this bond dividend.

Int. The books show Henry Clews charged with stock dividends from September, 1871, to September, 1873, in the aggregate $310,000 of stock of the B., C. R. & M. R'y Co. Do you know how Henry Clews received such stock dividends?

318 A. Certainly; some of them, and I think all of them, through me. The bonds were worth in New York in September, 1871, about seventy cents on the dollar. The stock had no market value in New York, to my knowledge, but there was some transactions along the line of the road in which sales were made, according to my recollection, at from ten to twenty cents on the dollar. Some sales were made at even less than ten cents. It is possible that there may have been some sales at Burlington for a higher figure than twenty cents, but I don't know of any.

Deposition of C. D. Van Vechten.

My age is 40 years; residence, Cedar Rapids; occupation, cashier Van Vechten's Bank.

Int. What experience have you had in the examination and comparison of handwriting and signatures?

A. Whatever has come before me in my capacity as cashier of bank for the last three years, and, of course, what I had previous to that in my business as merchant.

Int. Examine stock certificate No. 40, issued by Henry Clews, and the assignment on the back thereof, which are attached to deposition of Alla D. Traer, Exhibit 64. Compare the written words and letters in said assignment, "together with all rights and dividends declared, J. N. T." with the date and signature of "Harry Clews, per J. Nelson Tappan, trustee," attached to said assignment, and also with the signature of J. Nelson Tappan to Exhibit E to deposition of Henry Clews, and with the signature of said J. Nelson Tappan to his deposition herein, taken before Thomas H. Barowsky, and also with the signature of J. Nelson Tappan to his deposition taken herein before James T. F. Randolph, and state whether or not said written words and letters in the assignment of the stock are, in your judgment, in the same handwriting as the signature aforesaid.

A. The signatures referred to in the question are evidently by the same hand. I have no question, with the exception that the interlineation referred to shows that the hand was in a con-

319 strained position in writing. The letters of the interlineation are formed like those in the signature so far as the same letters occur in both, and the interlineation appears to be in the same handwriting as the signatures.

Cross-examination:

My experience is somewhat limited in the examination of attempted imitations, and is confined mostly to examining signatures, which I partially or wholly am acquainted with in the course of my business. Sometimes, perhaps, the imitation has shown constraint,

as though written under muscular contraction, but the best imitations which I have seen were in as free and easy a hand as in the original. This has the appearance of constraint, as though there was not room in making the interlineation for the free use of the pen which we find in the signatures referred to in the last interrogatory on direct examination.

Deposition of John Weare.

My age is sixty years; residence, Cedar Rapids; occupation, banker.

Int. What experience have you had in the examination and comparison of handwriting and signatures?

A. That that is usual with an active banker behind the counter for a quarter of a century continuously.

Int. Examine stock certificate No. 40, issued to Henry Clews, and the assignment upon the back thereof, which certificate and assignment are annexed to deposition of Alla D. Traer as Exhibit 64. Compare the written words and letters in said assignment, "together with all rights and dividends declared, J. N. T," with the date and signature of "Henry Clews, per J. Nelson Tappan, trustee," attached to said assignment, and also with the signature of J. Nelson Tappan to exhibit attached to the deposition of Henry Clews, and with the signature of said J. Nelson Tappan to his deposition herein taken, before Thomas H. Barrowsky, and also with the sig-
320 nature of J. Nelson Tappan to his deposition taken herein before James T. F. Randolph, and state whether or not said written words and letters in the assignment of the stock are in the same handwriting as the signatures aforesaid.

A. I believe it to be the same handwriting, written by the same person, each and every one of them.

Cross-examination:

Int. Point out any similarity between the several signatures of J. Nelson Tappan, which are unquestionably his signatures, and the interlineation on the back of stock certificate No. 40, "together with all rights and dividends declared, J. N. T."

A. First, that the ink is the same in the interlineation and signature on the certificate, except that in the signature the impression has been apparently defaced by a blotter; second, that the word "I" has the same form, in all material points, with that of the "J." Third, that the small letters used in the interlineation and in the signature of Tappan, especially the "s" and "e," are, in my opinion, of the same formation and style; and fourth, that the general impression and outlook of that portion which is the interlineation in the certificate and the signature of J. Nelson Tappan on the certificate bear a striking similarity.

Int. Do you observe any difference in the ink with which the depositions are signed and the signatures on the certificate?

A. I should think there was. I think the ink with which the depositions are signed is the same in each case, but differs from that

on the certificate. In signatures to the depositions the ink has a scarlet coloring, while that to the certificate, I believe, to be what we call black ink.

Int. You observe that the signatures to the transfer on the certificate, as well as the names of Henry Clews and R. A. Southwick, and the date are very much blurred, as it were, by a blotter, while the interlineation is without blur or blot of any kind whatever. What do you infer from this as to the time when the interlineation, signature, and names were respectively written?

(Defendants object; that the question is immaterial; it is not questioned as to the time when any of the writing was made, but
321 simply as to whether the interlineation is is in Tappan's handwriting.)

A. While the interlineation is without blur, the signatures, by the use of the blotter immediately after they have been written, would cause the blot or blur as represented by these signatures. I infer that the heavy signatures, by application of the blotter, might be blurred, while the interlineration, being in a small handwriting, would not suffer by use of the blotter. There would not necessarily be a difference in the time of writing the interlineation and the signature. I can't state, from the certificate being folded on the date, whether the date is affected by the blotter or by the folding of the paper.

The formation of the smaller letters, especially in the "e's" and "s's," both in the interlineation and the signature, bear a striking similarity. It is possible, but not probable, that the interlineation and the signatures could have been written by different persons.

Redirect:

It is my impression that the interlineation on the certificate and the signature to the transfer were not written by different persons, but that they were written by the same hand.

Second Deposition of Alla D. Traer. Taken Dec. 31, '79.

I have in my possession certificate of stock No. 40, of C. R. N. W. Cons. Co.

Int. 2. Will you produce the same to be copied photographically by a photographer sworn to make a correct *fac simile* copy of the face and back of the same, to the end that the several handwritings may be examined and compared by the court and by the parties whose handwriting purports to appear on the same?

(Defendants object; that it is immaterial and foreign to the issues; there is no authority for copying papers by a photographer either sworn or unsworn, and defendants' counsel advises the wit-
322 ness not to produce the paper for the purposes indicated, but that she produce it to be annexed by the commissioner to her deposition and to be returned to the court, and for no other purpose.)

A. I here produce the certificate to be annexed to my deposition, but for no other purpose.

(Counsel for defendants now notifies the commissioner not to permit this certificate, which is very important, to be taken from his possession for any purpose, and not to permit photographing of the same without the order of the court. Plaintiff moves to strike out that portion of the above answer, being the offer to annex to this deposition the said certificate, as not responsive to the interrogatory.)

Int. 3. Will you furnish the plaintiff's counsel with a photograph of the face and back of said certificate No. 40, at the plaintiff's expense, and without the same going out of your own control?

(Defendants object to the question as not calling for any testimony or fact but merely an attempt to persuade the witness to go into business on plaintiff's account. Defendants' counsel instructs the witness not to answer the question.)

A. I refuse to answer, by advice of my attorney.

Int. 4. Will you furnish the plaintiff's counsel with a photographic copy of said certificate No. 40, both face and back, at expense of the plaintiff, to be paid in advance, the money being deposited *instanter* with the commissioner?

(Defendants made same objection as last, and def'ts' counsel advises witness not to answer the question.)

A. I decline to answer the question upon the advice of my counsel.

(Plaintiff's counsel desire to enter the following reasons for wanting said certificate No. 40 photographed: 1st, the non-residence of the parties whose names purports to be attached to it, plaintiff denying the genuineness of the signature, more particularly the interlineations and the initials "J. W. T." or "J. N. T.")

(Defendants' counsel enters the following reasons for declin-
323 ing to have the certificate photographed: 1st. There is no authority in law for any such proceeding. 2d. Handwriting and different shades of ink cannot be so photographed as to admit of examination and comparison with any certainty, as in the case of the original, and defendants desire to offer expert testimony to show this to be the fact before it is assumed that photographic copies would afford any test.

The original certificate No. 40 is hereto attached as Exhibit 64.

(Plaintiff objects to attaching said certificate, as immaterial and irresponsive.)

Cross-examination:

Int. From whom did you receive this certificate, and when?

(Plaintiff objects, as not proper cross-examination.)

A. I received it from my attorney, J. C. Traer. Cannot give the date. It has been in my possession since I received it, until it went into the possession of my attorneys, Hubbard & Clark.

Third Deposition of Alla D. Traer. Taken Jan. 27, '80.

I am the same Alla D. Traer who testified before in this suit as a witness for plaintiff.

Int. In your former deposition you testified to purchasing the fifty shares of Clews stock in the C. R. N. W. Cons. Co., and the dividends thereon. State whether you received such dividends, and when, from whom, and in what manner.

A. I did receive such dividends. The exact date I cannot give, as I do not charge my memory with dates. It was not very long after Mr. Howard was here; couldn't say whether it was weeks after, or a shorter time. I can't remember dates. I received them from J. C. Traer in a certificate or note of deposit.

Int. Did your husband, J. W. Traer, receive, or is he to receive, any portion of said dividends?

A. He is not. The funds arising from said dividends have
324 been invested in one way and another, and have been used in the natural course of my business, and changing from time to time, as business transactions required.

Int. Did you mean your own business and transactions, or the business transactions of other?

A. My own, of course.

PLAINTIFF'S REBUTTING EVIDENCE.

Deposition of P. Martel, taken by Defendants.

I have had an experience in the examination and comparison of handwriting and signatures of about seven years as assistant cashier of the Union Savings Bank and Union Bank of Cedar Rapids.

Int. Examine stock certificate No. 40, issued to Henry Clews, and the assignment upon the back thereof, which are annexed to deposition of Alla D. Traer as Exhibit 64. Compare the written words and letters in said assignment, "together with all rights and dividends declared. J. N. T.," with the date and signature of "Henry Clews, per J. Nelson Tappan, Trustee," attached to said assignment, and also with the signature of said J. Nelson Tappan to his deposition herein, taken before Thomas H. Barowsky, and also with the signature of J. Nelson Tappan to his deposition taken herein before James T. F. Randolph, and state whether or not said written words and letters in the assignment are, in your judgment, in the same handwriting as the signatures aforesaid.

A. There are here in the interlineation of the letters "u," "w," and "s," that, in my judgment, were written by the same hand that these signatures were; that is, they would appear to be. It would be so natural for a man to go on and write that interlineation, and
then when he got down to the bottom here, would blot,
325 causing the ink of the lower part of the writing to be more taken up than the upper part of the writing.

Int. Is the interlineation, including the initials "J. N. T." at the end thereof, all in the same handwriting, in your opinion?

A. I should say not, in my judgment. I should think that in the

interlineation some of the letters bear evidence of being written by the same hand as the signature.

Cross-examination.

Int. What, in your best judgment, are the letters at the end of the interlineation?

A. If a man should show me that without my having seen the signature of J. Nelson Tappan, I should say the letters were "J. W. T.," but the letter which I might think was "W" looks so near like the "N" in the signature that it would be rather hard for me to be clear on this point.

Int. Do you observe anything constrained or cramped in the writing constituting the interlineation?

A. A man would naturally write his signature more unrestrained than he would were he to make an interlineation of this kind. A person would be more apt to write with a constrained hand; yes, it looks somewhat constrained.

Int. If a person was desirous of imitating the handwriting or the signature, would it be safe to use the blotter if he wished to preserve the similarity of the letters, the writing of the interlineation being in so fine a hand?

A. That would depend somewhat on the dryness of the atmosphere. It wouldn't be so safe to blot when the weather was damp and moist as it would be in a warm, dry, summer day.

Redirect:

Int. If a person were seeking to imitate writing or a signature blurred by the use of a blotter, would it not be equally safe, in your opinion, to use the blotter on the supposed imitation and thus give it the blurred appearance of the signature?

A. No; I think a man making an interlineation and writ-
326 ing in a finer hand would be careful in blotting.

Int. If the interlineation in this assignment were made at the time of the signature and just before the signature was written, would you expect to find it blurred by the use of the blotter as the signature is; and, if not, why not?

A. No; I would not expect the upper part to be blurred and blotted so much with the blotter as the latter part of the writing. The upper part of the writing would have more time to dry than the latter part, before placing the blotter there. In my judgment the written portion of the date is in the same handwriting as the signature. The written portion of the date is much less blurred than the signature.

Int. Do you think the interlineation is any more constrained as compared with the signature than what might naturally be expected from the space in which it is written, compared with the space where the signature is written?

A. No; I should think not from the space that was there for the interlineation to be made.

Int. Do you observe that in all the signatures of J. Nelson Tappan which you have looked at, the letter "N" following the initial

"J" is very much like a letter "W," if examined without reference to the letters which follow it?

A. Yes; it looks very much like the letter "W," yet at the same time on taking a second glance it is the letter "N."

Recross-examination:

Int. Do you wish to be understood as testifying that the interlineation of some six words, if it immediately preceded the writing of the signature, would have dried before the signature would have been made so that the blotter would have no effect on it?

A. Yes; I think such could be the case as the interlineation and the date were put there in March, supposing of course that it was written in a warm room, that it would be very apt to dry before a blotter could be put there.

Stipulation.

327 It is hereby stipulated before the commissioner by the parties hereto, that no attorney's fees were paid to A. S. Belt by trustees of the Construction Company, or for the trustees of the Construction Company for services as attorney for the Construction Company or for the trustees of the Construction Company, but that attorney's fees were paid in specific cases as follows: To Cook, Richman & Bruming in the 53 litigated cases in Benton county; to Traer & Gilchrist in same cases; to Bradshaw Bros., Tama county; to H. C. Hemingway, Butler county; and to Hubbard & Deacon in the mechanic lien cases against the B., C. R. & M. R'y. It is further stipulated that trustee's cash-book, pages 28 to 39, both inclusive, shall be copied by the commissioner as Exhibit No. 65 to the deposition of John W. Traer.

It is further stipulated and agreed that prior to August 25, 1877, J. Nelson Tappan in writing duly authorized Henry Clews to employ attorneys and take all steps necessary to demand and bring suit in his (Tappan's) name for the various matters and amounts claimed by plaintiff from defendants in the suit; that Henry Clews forwarded such writing to Clark & Lynch, attorneys, at Cedar Rapids, together with a power of attorney in due form of law to proceed under said authority from Tappan and make demand and bring suit accordingly. Said papers having been mislaid, their production by plaintiff is hereby waived. That under this authority Frank G. Clark, Esq., of said firm of Clark & Lynch, as attorneys for said Tappan, thereafter, and on or about said 25th August, 187?, made demand on J. W. Traer, one of the defendants herein, for the dividends belonging to the Clews stock mentioned in the petition, and for an accounting as to all rights connected with said Clews stock, and also demanded an inspection of the books of the Construction Company. It is further stipulated, subject to defendants' objection, defendants insisting that it is immaterial, incompetent, and foreign to the issues, that Clark & Lynch, sole attorneys for J. Nelson Tappan and Henry Clews, up to that time had no knowledge or information of the claim of Alla D. Traer to the Henry Clews stock and

dividends therein described in the pleadings, nor of her connection therewith, until the taking of the deposition of John W. Traer, about September 25th, 1879, and that said Clark and Lynch after May 1, 1877, conducted all the investigations touching such stock and dividends as such attorneys.

328 EXHIBIT A.

BURLINGTON, CEDAR RAPIDS & MINNESOTA RAILWAY CO.,
SECRETARY'S OFFICE, CEDAR RAPIDS, IOWA, *June* 7, 1871.

Copy of resolution of the Burlington, Cedar Rapids & Minn. R'y Company in executive session at this date, at their office in Cedar Rapids:

Resolved, That John W. Traer be authorized and empowered to act as assistant treasurer of the B., C. R. & M. R'y Co. for the specific purpose of collecting any subscription, donations, or any funds arising from taxes voted to said R. R. in the counties of Blackhawk, Bremer, Butler, Floyd, and Cerro Gordo for the purpose of aiding the construction of said road in said counties, as fast as the same may become due and payable, and pay over the same upon the proper receipt of D. W. C. Rowley, sec. of the Cedar Rapids Northwestern Const. Co.

BURLINGTON, CEDAR RAPIDS & MINN. RAILWAY CO.,
By GEORGE GREENE, *Pres't.*

Attest: D. W. C. ROWLEY, *Secretary.*

EXHIBIT B.

Rich. E. Hatch, James Armstrong, Dan'l Clark Briggs.
In Re.

LAW AND COLLECTION OFFICE OF HATCH, ARMSTRONG & BRIGGS,
319 BROADWAY, NEW YORK, *March* 10, 1876.

MARTIN HOWARD, Esq., *Cedar Rapids, Iowa.*

DEAR SIR: Enclosed please find certificate No. 48 for fifty shares ot the capital stock of the Cedar Rapids and Northwestern Con. Co. assigned in blank. Please present the same to the proper party and collect dividends, if any, and remit. I wish a thorough examination made. You are authorized to fill in my name in the assignment if necessary.

Yours, very respectfully, JAMES ARMSTRONG.

329 EXHIBIT C.

(The words and figures underscored are printed.)

Trustee Cedar Rapids North West'n Con. Co.

1876 To James Armstrong, Dr.

Approved by Trustees. J. W. TRAER, JNO. F. ELY,

To amount due on dividend acct. Certificate No. 48, issued Henry Clews, of date Dec. 15, 1873		10,000 00	
Jan. 31st, 1874	2,500		
Less 2	2,000	500 00	
6 per cent. interest		1,413 75	
As shown Ry. Con. Co. Ledger, page 178.			11,913 75

Received of the Cedar Rapids North Western Construction Company by the hands of J. W. Traer, Trustee, eleven thousand nine hundred thirteen & $\frac{75}{100}$ Dollars in full for the above account.

Correct. General Accountant. JAMES ARMSTRONG,
By MARTIN HOWARD, *His Att'y.*

Approved. Cedar Rapids, M'ch 19th, 1876.

(Endorsed as follows:)

Trustees Cedar Rapids North Western Construction Co.

Voucher.

JAMES ARMSTRONG.

No. 70. $11,913.75. Paid March 20, 1876.

Distribution of Account.

Old dividend acc't, 10,500.00. Interest acc't, $1,413.75.
Audited by D. W. C. ROWLEY, Sect. Check No. 70.

330 EXHIBIT D.

Geo. Greene, President. H. B. Stibbs, Cashier.

UNION BANK, CEDAR RAPIDS, IOWA, *Feb'y* 20, 1875.

J. W. TRAER, Esq.

DEAR SIR: There is due to Henry Clews on dividends from the Cedar Rapids North Western Const. Co. at this date ten thousand five hundred dollars.

Yours, D. W. C. ROWLEY,
Former Sect. and Acc't'nt.

Received this notice on the 19th day of March, 1876, and filed the same.

J. W. TRAER, *Trustee.*

331 EXHIBIT E.

What county.	When matured.	Character.	Total as originally listed.	Estimated per cent. of value.	Estimated Value.
Bl'khawk	1871	Conditional sub'ns	440 48	worthless	
Butler	1871	" "	2,665 99	"	
Floyd	1871	" "	1,944 73	"	
		The above are the uncollectible portion of the subscriptions in 9 different townships, which become due in 1871, where parties are dead or bankrupt.			
Benton	1873	Conditional sub'ns resisted by parties on grounds of non-performance of conditions, and in litigation.	11,650 65	Think will recover 70 p'r c't.	7,155 86
Tama	1873	Same as Benton, only not in litigation, about ½ original sub'ns coll'd in 1874. This amount includes all the poor ones and worthless	5,400 00	60 p'r c't.	3,240 00
Buchanan	1872	Sub'ns on acc't. Location depot at Hazelton station and Rowley	438 00	60 p'r c't.	262 80
Fayette	1872	Old subscriptions conditional on R'y being built by Oct. 15, 1872; condition not complied with and collection resisted. Think they are void and worthless	14,970 72	worthless	
Tama		Town lots at Dysart, population about 400	975 00	70 p'r c't.	682 50
"		Town lots at Traer, population about 600	9,315 00	70 p'r c't.	6,520 50
Butler		Town lots at Greene, population about 800, very much overestimated; too much laid out and salable only by the acre; have offered the interest for 15,000 on time, and find no purchaser	24,984 13	60 p'r c't.	14,990 49
		For'd	72,793 70		32,852 15

332 EXHIBIT E—Continued.

What county.	When matured.	Character.	Total as originally listed.	Estimated per cent. of probable value.	Estimated value.
		Am't for'd from 1st page	72,793 70		33,252 15
Fayette		Town lots at Maynard as listed at division	2,730 00	40 p'r c't.	1,092 00
		Population about 300; dead town; worth about what land is for farming purposes.			
Buchanan		Town lots at Hazleton Station. No appraisal, but I think worth			400 00
		Taxes voted in aid, estimated a remainder of about	10,000 00	90 p'r c't.	9,000 00
			85,523 70		44,744 15
		We have collected principally from taxes and paid on indebtedness of the Co. taxes and expenses of litigation about	12,000 00		
		On dividend, Jan'y, '75, 1st one made	2,000 00		
		Undischarged indebtedness yet to be met and probably expenses, taxes, and to close up, estimated at about	15,000 00		
			29,000 00		

J. L. BEVER:

As requested herewith list taken from book of odds and ends in hands of trustees of the late C. R. N. W. Con. Co., as listed Feb., 1875, with my estimate of probable value. If the depression in money matters continues, the estimate will prove too large, as no immediate disposal can be made of them, and the shrinkage and expenses will increase with delay, to say nothing of taxes and litigation.

Respectfully,

J. W. TRAER,
For Trustees.

333 EXHIBIT F.

CEDAR RAPIDS, *May* 8, 1876.

This certifies that Mrs. A. D. Traer this day filed a transfer of stock certificate No. 48, for 50 shares of stock heretofore transferred to James Armstrong, of New York, by trustee in bankruptcy of estate of Henry Clews, which transfer is hereby recognized.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT G.

CEDAR RAPIDS, *March* 20, 1876.

This certifies that stock certificate No. 48, issued to Henry Clews May 1st, 1871, for fifty shares of stock, was duly filed for James Armstrong, of New York city, by his attorney, with assignment of same by J. Nelson Tappan, trustee in bankruptcy of the estate of Henry Clews, attested by R. A. Southworth, together with rights and dividends declared. Referred to former secretary for advice and statement of account, and being advised the same was regular and in accordance with law, the transfer was duly recognized and payment of declared dividend certified by sect'y made.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT H.

OFFICE C. R. N. W. CONST. CO., *February 15th*, 1875.

At an adjourned meeting of stockholders from the 13th inst. a committee, appointed 21st Nov. '74, on plans for closing up the affairs of the company and dissolving the same, reported as follows:

The undersigned, a committee appointed on the 21 November, '74, to devise a plan for closing up the affairs of the company, and
334 for the dissolving of the same, report that they find the company possessed of a large amount of assets and property of various kinds, which to sell or close up profitably will require time, as a large portion of the personal assets are in litigation, and the real estate is of such a character as not to be immediately salable.

We further find that there is an indebtedness existing against the corporation growing out of its contracts with the B., C. R. & M. R'y Company to furnish the right of way on the Milwaukee and Pacific Divisions of said railway and for other causes. Your committee is, however, unable to state accurately the amount and value of the said indebtedness. Your committee would therefore suggest that the board of directors of this corporation recommend to the stockholders the passage of the following resolutions as a feasible plan for the dissolution of the same:

Whereas the objects for which this company was organized have been accomplished, and it is the desire of a majority of the stockholders to dissolve the same on account of the expense of continuing the incorporation and for other reasons; and whereas there is a large amount of personal assets in possession of the general agent still uncollected and real estate unsold, which it will require time to profitably dispose of; and whereas this company is indebted in various sums under its contract with the B., C. R. & M. R'y Co. to furnish right of way for its Milwaukee and Pacific Divisions and for other causes, which said indebtedness is a lien upon the assets aforesaid, and must be paid before the proceeds of said assets can be distributed among the stockholders as hereafter stated:

Now, therefore, resolved, That Wm. Greene and John W. Traer be, and are hereby, designated as trustees with full power to collect and

sell all assets of the company, and that the secretary be, and is hereby, directed to assign, transfer, and set over to the said trustees all the property of said company, both real and personal in trust, nevertheless; that the said trustees shall proceed forthwith to collect the said personal and sell the said real property, and after first paying all the just and lawful debts of said company, divide the remainder among the stockholders in proportion of the stock interest in said company.

335 2nd. That said trustees shall have and receive for their services aforesaid such compensation as may be agreed upon by a majority of the stockholders.

3rd. That the Cedar Rapids Northwestern Construction Company shall be and remain forever dissolved from and after the time a majority of the stockholders shall have adopted these resolutions, and the trustees herein named shall have accepted in writing the trust herein created.

4th. That if the said Wm. Greene and John W. Traer shall accept the trust hereby imposed, the secretary shall charge them as trustees with the assets of said company.

We, the undersigned, stockholders of the Cedar Rapids, Northwestern Construction Company do hereby consent to and adopt the foregoing plan for the dissolution of said corporation.

Dated Cedar Rapids, Feb. 20th, 1875.

WM. GREENE.	W. W. WALKER.
J. W. TRAER.	D. W. C. ROWLEY.
E. M. GREENE.	GEORGE GREENE.
JAS. L. BEVER.	W. H. PETTIBONE.
JNO. E. ELY.	GEO. H. ELY.
J. W. BARNES.	

On motion, resolved, That the secretary be requested to promptly write up and balance the company's books, and make settlement with the trustees during this month, and that his salary be continued during the month of February for that purpose.

We, Wm. Greene and John W. Traer, do hereby accept the foregoing trust.

Dated Cedar Rapids, Feb. 20th, 1875.

WM. GREENE,
J. W. TRAER,
Trustees.

EXHIBIT I.

NEW YORK, *Nov.* 13, 1875.

J. W. TRAER, Esq., *Vinton Iowa.*

DEAR SIR: In answer to your letter of the 8th inst., I beg
336 to refer you to Mr. J. Nelson Tappan, trustee of my estate in bankruptcy, into whose hands such matters under the law must necessarily go. I am unable, therefore, to avail of your proposition. Thanking you for your good intentions,

I remain, very truly yours, HENRY CLEWS.

EXHIBIT K.

NEW YORK, *Feb. 17th*, 1876.

Received of J. W. Traer, trustee of Cedar Rapids Northwestern Construction Company, two hundred dollars, being first dividend on the fifty shares of stock in said company standing in the name of Henry Clews.

J. NELSON TAPPAN,
Trustee of Henry Clews & Co., per R. A. S.

EXHIBIT L.

(The words and figures underscored are printed.)

Western Division Cedar Rapids Northwestern Construction Company.

1874	To J. W. TRAER,		Dr.
April 1st.	To percentage for securing and collecting of taxes in Blackhawk, Butler, Floyd and Cerro Gordo counties on main line, and Tamma county, on Pacific Division B., C. R. & M. R'y, being 5 per cent. on amt. reported coll'd to this date--	$145,239 03 .05	
		$7,261 95	$7,261 95
	To 5 per cent. com's., for coll'n, donations sub'n in same counties, per report, as afores'd ----------	$65,645 00 05	
		$3,282 25	3,282 25
			10,544 20

337 Received of the Cedar Rapids Northwestern Construction Company by the hands of

Ten thousand five hundred forty-four $\frac{20}{100}$ dollars in full for the above account.

Correct.

General Accountant.

Approved.

Superintendent.

Rapids, April 1st, 1874.

(Endorsed :) Western Division, Cedar Rapids Northwestern Construction Co. voucher. J. W. Traer. No. —. Paid. $10,544.10.

EXHIBIT M.

Articles of agreement made July 12th, 1879, between the B., C. R. & M. R'y Company and the C. R. N. W. Construction Company, whereby said Construction Company agrees to grade, bridge, tie, iron, build, and complete for said railway company, in good, substantial, and workmanlike manner, all the lines and branches of railway which said railway company may locate and designate, and the railway company agrees to pay for each mile of railway and side track so built $15,000 of the first mortgage bonds of said railway company and $16,000 in full-paid stock of said railway company, said Construction Company to have the proceeds of all donations and subscriptions made to aid in building said road,
338 the same to be paid over as the work progresses. Said Construction Company further agrees to secure the right of way and station grounds for said railway.

EXHIBIT N.

We, the undersigned, stockholders of the Cedar Rapids Northwestern Construction Company, hereby sell, assign, transfer, and deliver, for a consideration named below, all our interest in property, lands, rights, and choses in action, of whatever kind, equitable or legal, to Mrs. A. D. Traer, which is now or may come within the control of the trustees of said company, with exception made below; and we hereby authorize and direct the trustees to pay all dividends and recognize in the said Mrs. A. D. Traer the owner of all rights and equities in the assets now in hand, or to come into the hands or control, of said trustees, except such recovery as may be had on claims against the B., C. R. & M. R'y Co., which claim is reserved, subject to paying out of such proceeds a *pro rata* proportion of the costs, attorney fee, and legal expenses made in the case.

Date of transfer.	Owner of stock.	Shares rep'd.	Consid'n.
April 11, 1876	George Greene	135	$7,560 00
July 11, 1876	D. W. C. Rowley	30	1,500 00
Dec. 28, 1876	Jno. F. Ely	70	3,080 00
Jan'y 21, 1876	S. L. Dows*	50	2,000 00
Jan'y 31, 1877	George Greene	25	1,350 00
Jan'y 31, 1877	J. W. Traer	30	1,500 00

*See separate assignment.

EXHIBIT O.

CEDAR RAPIDS, *Nov.* 26, 1875.

At a meeting of the members of the Cedar Rapids Northwestern Construction Company (now dissolved), in which there were
339 present Geo. Greene, S. L. Dows, J. W. Traer, Wm. Greene, and D. W. C. Rowley, the Hon. George Greene was called to the

chair, and D. W. C. Rowley acted as secretary. The following resolutions were adopted:

Resolved, That in the matter of an attempt to secure a lien on the Milwaukee Division and Pacific Division of the B., C. R. & M. R'y for the amount due the Cedar Rapids Northwestern Construction Company, it is the sense of the stockholders present that the trustees should accept the proposition of N. M. Hubbard to prosecute the same for a consideration of five hundred dollars and incidental expenses, and for additional fee of 10 per cent. on the amount recovered.

Resolved, That the deposits of funds in the Union Bank collected from the assets of the Cedar Rapids Northwestern Construction Company by the trustees, from time to time, is hereby approved.

Resolved, That Wm. Greene and J. W. Traer be hereby appointed a committee to settle with Mr. Zeigler, of West Union, for balance of ties and wood used in construction.

Resolved, That if any member of the late C. R. N. W. Construction Company shall purchase the interest of Henry Clews in said Construction Company, it shall be considered as made for and in the interest of said Construction Company.

Adjourned.

D. W. C. ROWLEY,
Secretary of the Meeting.

EXHIBIT No. 1.

OFFICE OF THE C. R. N. W. CONST. CO.,
CEDAR RAPIDS, *Dec.* 23, 1874.

Stock meeting of this company was held, with the following members present: Dr. Jno. F. Ely, Wm. Greene, J. W. Traer, D. W. C. Rowley, and Hon. Geo. Greene, at which the following resolutions were unanimously adopted:

Resolved, That with a view of closing up the affairs of the company, the trustee be instructed to take immediate steps for a partition of the company property at the town of Greene, in this State, by having the same appraised and divided ratably among the several proprietors, and also to make an equitable division of the bills receivable among the said proprietors.

340 Resolved, That the secretary be instructed to furnish the trustee with a copy of this resolution.

Also, resolved, That J. W. Traer, trustee, be hereby instructed to deed to the Burlington, Cedar Rapids & Minn. R'y Co. the depot blocks at the said town of Greene, numbered as follows: three, six, eleven, fourteen, and nineteen.

Adjourned.

D. W. C. ROWLEY,
Secretary of the Meeting.

EXHIBIT No. 2; ALSO, EXHIBIT P.

CEDAR RAPIDS, *Nov.* 21, 1874.

Stock meeting of this company was held at this date, with the

following members present: Geo. Greene, S. L. Dows, Jno. F. Ely, Wm. Greene, and D. W. C. Rowley.

On motion, Dr. Ely, S. L. Dows, and D. W. C. Rowley were appointed to propose a plan of closing up the affairs of this company.

On motion, resolved, That J. W. Traer, agent, be paid seventy-five dollars per month, beginning April 1st, 1874, (and that this adjustment of salary be in full of all services to this company up to said last date.)

On motion, adjourned.

D. W. C. ROWLEY,
Secretary of the Meeting.

OFFICE OF THE C. R. N. W. CONS. CO., *Dec.* 21, 1874.

Stock meeting of this company was called to order by the president, Dr. Jno. F. Ely. There were present George Greene, S. L. Dows, J. W. Traer, Wm. Greene, and D. W. C. Rowley. Proceedings of last meeting, 21st inst., were read; and, on motion, the said records were corrected by striking out the last three lines in the resolution relating to salary of J. W. Traer.

Adjourned.

D. W. C. ROWLEY,
Secretary of the Meeting.

341 EXHIBIT No. 3.

OFFICE OF THE C. R. N. W. CONS. CO.,
Feb. 13, 1875.

At stockholder's meeting convened at this date, the committee to draft program of settlement presented a report which was referred back to the same committee for the further perfecting of plan.

Adjourned to 15th inst.

D. W. C. ROWLEY,
Secretary of the Meeting.

EXHIBIT No. 4.

CEDAR RAPIDS, *March* 25, 1875.

At a meeting of the members of the late Cedar Rapids Northwestern Construction Company, called by the trustees thereof, the resignation of Wm. Greene was accepted, and Dr. Jno. F. Ely was elected to fill the vacancy.

Adjourned.

D. W. C. ROWLEY,
Secretary of the Meeting.

I hereby accept the trust above named, this 25th day of March, 1875.

JNO F. ELY.

EXHIBIT No. 5.

CEDAR RAPIDS, *Ap'l 20th*, 1876.

Assignment by James L. Bever of his rights to 25 shares of stock to Hon. Geo. Greene, which transfer is hereby recognized.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 6.

CEDAR RAPIDS, *Nov. 10th*, 1876.

I hereby sell and assign five shares of the capital stock of
342 the Cedar Northwestern Construction Co. to Mrs. A. D. Traer, for a consideration of two hundred and twenty-five dollars. This assignment to include dividends, rights, and equities. No certificate having been issued to me.

E. M. GREENE.

The above assignment is hereby duly recognized.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 7.

CEDAR RAPIDS, *Feb.* 14, 1877.

This certifies that Mrs. A. D. Traer this day presented stock certificate No. 31, for 5 shares issued to W. H. Pettibone, duly assigned in blank, and requested a transfer of the same, which is hereby recognized.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 8.

CEDAR RAPIDS, *March*, 1877.

This certifies that N. B. Squires, of Troy, New York, has this day assigned stock certificate No. 18, of date May, 1871, issued to him, to Mrs. A. D. Traer, of Linn county; which assignment has been duly presented by the said Mrs. A. D. Traer for transfer, and is hereby duly transferred to her in accordance with her request.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 9.

CEDAR RAPIDS, *March 13th*, 1877.

This certifies that J. W. Barnes has this day filed assign-
343 ment of stock standing in his name, being five shares, executed in favor of Mrs. A. D. Traer, as see assignment. The

rights under stock certificate No. 24 is therefore recognized as transferred to Mrs. Traer. No other assignment having been filed heretofore.

Witness—

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 10.

CEDAR RAPIDS, *March* 13*th*, 1877.

This certifies that Mrs. A. D. Traer has this day filed assignment of five shares of stock issued to T. W. Barhydt, Esq., c't'f. No. — being duly presented for transfer, the same is hereby transferred to Mrs. A. D. Traer, with all rights and equities.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 11.

CEDAR RAPIDS, *Jan.* 2*nd*, 1877.

This certifies that S. L. Dows this day filed stock certificate No. 36 duly assigned to him by the Union Bank for transfer to him, which transfer is hereby recognized.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 12.

CEDAR RAPIDS, *Jan* 23*rd*, 1877.

This certifies that H. B. Stibbs has this day filed stock certificate No. 36 duly assigned to him by S. L. Dows, and requested recognition of transfer of such rights as the c't'f. conveyed, subject to endorsement of a sale and assignment with exception of, see
344 the c't'f. The assignment of the excepted right is hereby recognized by the trustees.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 13.

CEDAR RAPIDS, *Dec.* 28, 1876.

This certifies that Jno. F. Ely this day presented certificate of stock issued to Geo. H. Ely, for ten (10) shares, duly assigned to him by Geo. H. Ely, and requested a transfer to him of all the rights and equities. Transfer was therefore recognized.

J. W. TRAER,
Acting Trustee.

EXHIBIT No. 14.

CEDAR RAPIDS, *March* 26, 1877.

Stock certificate No. 32, issued to James J. Warren, of Massachusetts, having been presented by Mrs. A. D. Traer with assignment

to her in proper form, the transfer of said stock and right of James J. Warren to Mrs. A. D. Traer, is hereby duly recognized, being 20 shares.

J. W. TRAER, *Trustee.*

Memoranda List of Stockholders.

MARCH 26, 1877.

Geo. Greene	160	shares.
Jno. F. Ely	70	"
A. D. Traer	135	"
Wm. Greene	55	"
H. B. Stibbs	50	"
D. W. C. Rowley	30	"

EXHIBIT No. 15.

Presented by S. L. Dows, Jan. 2nd, '77, and accompanied
345 with assignment in separate agreement filed trustee of all
. equities in assets held by Co., except right to proportionate am't of am't claimed of R'y Co.; see terms of ass'm't said sale of and ass'm't of assets being made to Mrs. A. D. Traer, subject to its terms. Parties recognized will take notice of her rights.

J. W. TRAER,
Trustee for Stockholders.

EXHIBIT No. 16.

For value received, I do hereby sell, assign, and transfer to S. L. Dows —— shares of the capital stock, and do hereby constitute and appoint —— attorney to transfer said stock on the books of the company.

UNION SAVINGS BANK,
By H. B. STIBBS, *Cash.*

Dated Jan'y 2nd, 1877.

EXHIBIT No. 17.

For value received, I do hereby sell, assign, and transfer to H. B. Stibbs fifty shares of the within-mentioned capital stock in accordance with agreement made this 22d day of Jan'y, 1877, and do hereby constitute and appoint J. W. Traer, trustee, attorney to transfer the said stock on the books of the company.

S. L. DOWS.

In presence of—
P. MARTELL.
Dated Jan'y 23d, 1877.

EXHIBIT No. 18.

Assignment of Assets C. R. N. W. Const. Co.

Whereas I have this day sold to Mrs. Alla D. Traer that portion of the assets of the Cedar Rapids Northwestern Const. Co. covered

or held by virtue of fifty shares of stock now held by me, except the equitable proportion which may be received on lien claim against the B., C. R. & M. R'y Co., which proportion will be subject
346 to costs, attorneys' fees, expenses, and heretofore and hereafter incurred if paid by trustees, and for the securing of which stock c't'f. No. 36 is still held by me:

Now, therefore, I hereby agree as soon as settlement by judgment or otherwise is secured by said R'y Co., and the proportional part due on said above mentioned stock is paid over, whether in money, stock, or bonds, subject and less costs, and as above mentioned, that I will deliver the certificate to Mrs. A. D. Traer, or her assignees, in consideration of twenty-five hundred dollars received in full for said assets as above mentioned, and I hereby authorize the trustee of said Con. Co. to transfer and pay over to Mrs. Traer, or her order, all my rights, choses in action, moneys, or credits of whatsoever kind in their custody or control. Witness my hand, Jan'y 2d, 1877.

Filed Jan'y 2d, '77.

S. L. DOWS,
J. W. TRAER,
Trustee.

EXHIBIT No. 19.

To the stockholders of the Cedar Rapids Northwestern Construction Co.:

The undersigned, your trustees, beg leave to report (see detail report on file) as follows:

Total am'ts realized since Feb. 20, '75	$41,625 17
Total disbursements, see voucher	41,405 05
Balance on hand	220 12
There is due and unadjusted com'n to agent	250 00
Other expenses	100 00
Legal expenses, estimated	300 00
Claim of J. W. Traer for services, rejected by board of directors	10,544 19

Assets per ledger to be closed out see book A. We respectfully call the attention of the stockholders to the fact that the ownership of assets, except amount claimed by R'y Co. (which we call lien claim), is now by the record assigned to Mrs. A. D. Traer, she having purchased the equities to all the assets (except the lien claim),
347 and the rights of c't'f. No. 32, issued to J. J. Warren. Mrs. Traer requests a division of the assets and conveyance made to her of her 24–25, preferring to control it in her own way.

As we prefer being relieved as trustees of that portion of our trust, we ask the authority of the stockholders to make a division of the assets as above, either by agreement or otherwise, of the only two owners now as well as approval of report and discharge as regards the case of this portion of the assets.

J. W. TRAER,
JNO. F. ELY,
Trustees.

March 15, 1877.

EXHIBIT No. 20.

STOCKHOLDERS' MEETING, *March 17th*, 1877.

Present: George Greene, J. F. Ely, D. W. C. Rowley, Mrs. A. D. Traer, H. B. Stibbs, and J. W. Traer.

Hon. Geo. Greene was called to the chair.

Record since last meeting read and approved.

On motion the following resolution was adopted:

Resolved, That the action of the trustees are hereby approved, and that they be instructed to proceed in some equitable manner to divide or adjust the remaining two interests in assets (except lien claim) and when done to the satisfaction of Mrs. A. D. Traer and J. J. Warren or their assignee that they stand discharged from further responsibility as to this portion of the company's affairs.

GEO. GREENE.
JNO. F. ELY.
D. W. C. ROWLEY.
E. M. GREENE.
A. D. TRAER.
H. B. STIBBS, *Cash.*
J. W. TRAER.

Attest: J. W. TRAER,
Sect. Pro Tem.

EXHIBIT No. 21.

This acknowledgment witnesseth that on my demand J. W. Traer, J. F. Ely, trustees of the Cedar Rapids Northwestern Construction Co., in accordonce with the action of the stock-
348 holders, M'ch 27, 1877, as see Co.'s record, have this day made satisfactory settlement and payment to me of fund realized to date and have made conveyance to me of all real estate unsold and have delivered to me all notes, mortgages, and securities in their hands, together with assignment of all legal and equitable rights, choses in action of said company in their hands as far as practical with the exception of the rights of the recovery against the B., C. R. & M. R'y Co. reserved by Geo. Greene, J. F. Ely, S. L. Dows, D. W. C. Rowley, and J. W. Traer, as per terms of their assignment to me, page 47, Co.'s records.

In consideration of which and their agreements made herewith to make such other instruments from time to time to enable me fully to adjust and realize on all assets with above exception, I hereby release and discharge the said trustees from further responsibility except any further action necessary in paying over or delivering to me anything coming into their hands equitably and legally mine. And I hereby bind myself, heirs, and assignees to convey to purchasers of real estate when title has been made to such lots or parcels of lands as said trustees have contracted on the payment to me of the remaining purchase money due on contracts of the respective parties.

Cedar Rapids, Sept. 4th, 1877.

ALLA D. TRAER.

EXHIBIT No. 22.

We, the undersigned, trustees of the Cedar Rapids Northwestern Construction Co., in accordance with the instructions of the stockholders, March 17, 1877, and the demand of Mrs. A. D. Traer in person and by attorney, N. M. Hubbard, Esq., we have this day caused deeds to be made, executed, and delivered for all unsold real estate as heretofore received by us, and we hereby assign, set over, and transfer to said A. D. Traer all the notes, mortgages, judgments, donations, taxes, together with all equitable and legal rights and choses in action and whatsoever kind or character of which said company are seized or entitled to except the equitable proportions reserved of the am't claimed of the B., C. R. & M. R'y
349 Co. by George Greene, J. F. Ely, S. L. Dows, and D. W. C. Rowley, subject to the terms of assignment, see Co.'s record.

Witness our hands Sept. 4, 1877.

J. W. TRAER,
JNO. F. ELY,
Trustees.

EXHIBIT No. 23.

We, the undersigned, stockholders of the Cedar Rapids Northwestern Construction Co., do hereby acknowledge the receipt by the hands of J. W. Traer and J. F. Ely of all property, real and personal, rights, choses in action, moneys, and credits entrusted to their care as trustees, at the stockholders' meeting, Feb. 20, 1875, and do hereby ratify and approve all settlements, pay'ts, and adjustments made by them, and do hereby finally release and discharge them from all liability of whatsoever kind to the late Co. and its stockholders.

Witness our hands, respectively, this Dec. 11, 1877.

GEO. GREENE, 160 shares.
WM. GREENE, 55 shares.
H. B. STIBBS, cash, fifty shares.
JNO. F. ELY, seventy shares.
D. W. C. ROWLEY, thirty shares.
A. D. TRAER, 35 shares.
E. M. GREENE, five shares.

STATE OF IOWA, }
County of Linn, } *ss:*

On this 10th day of April, A. D. 1878, before me, a notary public, personally came Geo. Greene, Wm. Greene, H. B. Stibbs, Jno. F. Ely, D. W. C. Rowley, Mrs. A. D. Traer, E. M. Greene, to me personally known to be the identical persons whose names are affixed
350 to the above, and acknowledged the same to be their voluntary act and deed.

Witness my hand and notarial seal.

[L. S.]

P. MARTEL,
Notary Public.

EXHIBIT No. 24.

Guarantee Agreement.

Whereas I have for a consideration of fifteen hundred and twenty-five dollars sold to Mrs. A. D. Traer all my equitable interest in the assets of the Cedar Rapids Northwestern Construction Co., except such amounts as shall be recovered on settlement of lien cases against the B., C. R. & M. R'y Co., which amount I reserve subject to costs and coll'n:

Now, therefore, I hereby undertake to guarantee to Mrs. A. D. Traer the legal and peaceable possession of the proportion of assets now in the hands of the trustees, whether dividends or otherwise, except as above, to the extent of the above consideration of fifteen hundred and twenty-five dollars, with 10 per cent. interest less any dividend received. The intention being to guarantee the same to her only as against claims, demands, or legal process on the part of the B., C. R. & R'y Co., their successors in interest and assignees, but none other.

Witness my hand July 7th, 1876.

D. W. C. ROWLEY.

EXHIBIT No. 25.

Trustee of Cedar Rapids Northwestern Construction Company to T. W. Barhydt, Dr.

1875.		
May 12.	To Co.'s note of date Feb. 9, 1875, due in 90 days	$200 00
	To 10 per cent. on same	5 15
		$205 16

351 Received of trustees of the Cedar Rapids Northwestern Construction Company, by the hands of J. W. Traer, trustee, ck. 26, two hundred five $\frac{16}{100}$ dollars, in full for above account.

H. B. STIBBS, *Csh.*
Per S. J. B.

Rapids, May 12, 1876.

[Endorsed:] Trustees of C. R. N. W. Cons. Co. Voucher, T. W. Barhydt. Bills payable No. 26, $205.16. Paid May 12, 1875. Bills payable, $200.00. Int. $5.16. Audited by ——.

$200. CEDAR RAPIDS, IOWA, *Feb.* 9, 1875.

Three months after date the undersigned promises to pay to the order of T. W. Barhydt two hundred dollars at Union Savings Bank, Cedar Rapids, value received, with interest at 10 per cent. per annum.

CEDAR RAPIDS NORTHWESTERN CONST. CO.,
By WM. GREENE, *Treas.*

[Endorsed:] For collection. T. W. Barhydt. Pay H. B. Stibbs

or order, for collection, acct. of the Merchants' Nat. Bank of Burlington. A. N. Parsons, Csh.

EXHIBIT No. 26.

Private. NOV. 8TH, 1875.

HENRY CLEWS, Esq.

DEAR SIR: How are you progressing? Would be glad to hear from you. Judge has returned, but not much better. Wm. is expected soon from Colorado, and I fear I cannot hold Prentiss' matter much longer. A small dividend could be made soon if it was in shape. Can anything be accomplished if I should call? It looks to me as though his assignment should be filed. Will come and see, if you think best, soon. Advise me fully.

Respectfully, J. W. TRAER.

352 EXHIBIT No. 27.

FEB. 24TH, 6.

J. NELSON TAPPAN, *Trustee of Henry Clews' Estate.*

DEAR SIR: I erred in mine of 14th in saying no certificate was issued to Clews for C. R. N. W. Con. stock as it turns up in the old stock books not having been called for. I herewith enclose same. As solicited I have been trying to elicit a proposition for the stock from parties I tho't might invest. Will write you in case of a proposition being made. Money is very close out here.

Truly yours, J. W. TRAER, *Trustee.*

EXHIBIT No. 28

Is bill in United States circuit court, district of Iowa, in which Fred. Taylor, Alexander Taylor, the Farmers' Loan and Trust Co. are plaintiffs, and the B., C. R. & M. R'y Co., the Cedar Rapids Northwestern Construction Company, Geo. Greene, Wm. Greene, D. W. C. Rowley, John F. Ely, S. L. Dows, John W. Traer, E. M. Greene, and W. W. Walker are defendants.

This bill shows that plaintiffs are trustees in various deeds of trust issued to secure bonds of the B., C. R. & M. R'y Co., which had been respectively foreclosed in U. S. circuit court, district of Iowa, and by decree there was found due on bonds on—

Main line	$6,409,150
On bonds on Milwaukee Division	2,509,622
On bonds on Pacific Division	2,191,200

That the various divisions of said railway had been sold under the foreclosure decrees, and bid in by the bondholders, leaving due the bondholders, after crediting the amounts realized from such sales, a sum amounting in the aggregate to over $10,000,000, and that the B., C. R. & M. R'y Co. is totally insolvent.

That on the 12th day of July, 1870, the B., C. R. & M. R'y Co. made a contract with the Cedar Rapids Northwestern Con-
353 struction Company to build all the lines and branches of railroad which said railway company should locate and designate

for $15,000 per mile in first-mortgage bonds, and $16,000 per mile of full paid-up stock of said railway company; that under this contract the Construction Company built 185¾ miles of railroad, and received pay from the railway company for about 195 miles of railroad in stock and bonds at the contract price, thus getting pay for over nine miles of track which never had any existence, except upon paper; that the individual defendants named in the bill were officers and stockholders in both the Construction and railway companies, and controlled both companies; that they fraudulently contracted with themselves and for themselves, and made large profits out of building said road; that they issued to themselves, under the Construction Company contract, $5,000,000 of full-paid stock of the railway company, not one dollar of which was ever paid up, by means of which they kept absolute control of the railway company, and still own large amounts of stock, on which they have paid nothing, as follows: George Greene, 12,545 shares; Ely, 8,254 shares; Wm. Greene, 4,722½ shares; Rowley, 725 shares; Dows, 589 shares; Walker, 1,050 shares; E. M. Greene, 204 shares, all of the par value of $100 each. That they built said railroad of poor material, with inferior work, and not a first-class road, as they agreed; that the construction contract is fraudulent and void, because the defendants contracted with themselves for themselves; that plaintiffs are entitled to an account from defendants of all profits made by them under their contracts, of the total amount of all bonds and stock received by them at its par value, of the bonds and stock received by them for upwards of nine miles of road not built; and the bill prays for a decree accordingly.

This bill is endorsed by E. R. Mason, clerk, as filed Dec. 22, 1876.

354 EXHIBIT No. 29.

178. DR. *Henry Clews.* CR.

1874.			1873.			
Mch. 16.	To cash, 247--	$2,000	Dec. 15.	By journal,	103.	10,000
	Balance------	10,500	1874. Jan. 31.	" "	105.	2,500
		$12,500				$12,500
				By balance----		$10,500

EXHIBIT No. 30.

CEDAR RAPIDS, *Jan.* 3, 1876.

This certifies that on this day Mrs. A. D. Traer filed for transcript the following stock certificates, issued to Wm. Greene and by him duly assigned to her.

Attested by W. A. Rendall.

We therefore recognize a transfer of said stock to said Mrs. Traer, certificates as follows:

32—308

Date.	Issued to.	No. c't'f.	No. shares.
May 1, 1871.	Wm. Greene ----------	3	20
" "	" " ----------	5	10
" "	" " ----------	6	10
" "	" " ----------	7	5
" "	" " ----------	34	10

Attest:

J. W. TRAER,
JNO. F. ELY,
Trustees.

355 EXHIBIT No. 31.

NEW YORK, *Feb.* 7, 1876.

JAS. L. BEVER, *City National Bank, Cedar Rapids, Iowa.*

D'R SIR: Will you be so kind as to inform me what, in your opinion, is the value of the assets which came into the possession of J. W. Traer, of your place, as trustee of the Cedar Rapids Northwestern Construction Company, and if not asking too much I should like a description of such assets.

I write this at the suggestion of Mr. Traer, who refers me to you as one both able and willing to afford the information. Hoping to hear from you soon, and that you will not consider that I am not troubling you too much,

I am, very respectfully, yours,

J. NELSON TAPPAN,
Trustee of Henry Clews & Co.,
Per R. A. S.

EXHIBIT No. 32.

FEBRUARY 15, 1876.

J. NELSON TAPPAN, Esq., *Trustee, New York.*

D'R SIR: In answer to your inquiry of 7th inst. would say that, not being familiar with the details of the North Western Construction Company, I called on the trustees and requested a list of assets and an estimate of their value. There is no market value for the stock here, and careful inquiry satisfies me that it is next to impossible to do other than guess at the value of the assets, for the reason of their being so scattered, and a number of the claims I am informed being in litigation. In addition to the assets in the hands of the trustees, the company have in litigation a claim against the B., C. R. & M. R'y Co. I learn from parties interested that the general opinion is that it is exceedingly doubtful if the Construction Company can realize anything from the claim, and also that the
356 chances are about even for a judgment to be rendered against the Construction Company.

With the enclosed list of assets and the above facts, you have the best information I have been able to procure.

Yours, truly, JAS. L. BEVER.

EXHIBIT No. 33.

Is voucher same form as Exhibit 25, for $20, to pay draft dated March 30, 1875, drawn on D. W. C. Rowley by Brainard, Pomeroy & Co., in favor of H. Rickel, on grading contract; voucher dated April 7, 1875, approved by Ely and Traer, trustees, and certified by D. W. C. Rowley, general accountant, to be correct.

EXHIBIT 34.

Same form voucher for partial payment to Washington township, right of way committee, William Nevin, chairman, on the excess over $16,000 of Washington township railroad tax, which excess goes to said com. by agreement; $150, signed "Wm. Nevin," dated September 25, 1875, approved by Ely and Traer, trustees, certified as correct by D. W. C. Rowley, former secretary and accountant, audited by D. W. C. Rowley.

EXHIBIT 35.

Voucher April 3, 1875, for overdraft on bank account (Union Savings' Bank) made by D. W. C. Rowley, secretary, in payment of company indebtedness prior to February 20th, 1875 (see account transferred to trustees); $661.30, signed "H. B. Stibbs, Cr.," approved by Ely and Traer, trustees, certified as correct by D. W. C. Rowley, general accountant.

EXHIBIT No. 36.

Draft drawn by C. C. Cook on D. W. C. Rowley, in favor of E. Oliphant, on account of Brainard, Pomeroy & Co., for grading, $13.50, certified as correct by D. W. C. Rowley.

357 EXHIBIT 37.

Voucher on account Brainard, Pomeroy & Co., amount paid E. Oliphant for extra dirt used in grade work on section 9, Milwaukee Division B., C. R. & M. R'y., being in full of all demands by said Oliphant, as per order enclosed; $13.50, dated June 9, 1875, signed "Edward Oliphant," approved by Ely & Traer, trustees, audited by D. W. C. Rowley.

EXHIBIT No. 38.

The Burlington, Cedar Rapids & Minnesota Railway Company to C. C. Cook, of Cedar Rapids, Dr.

1875.		
Jan. 12.	To salary two weeks, ending Jan. 26, 1875	$25 00
	Expenses.	
	Two meals	50
16.	Five days' board at West Union	5 00
	Livery hire	1 75
	Dinner at Clermont	25
	Recording Zeigler's deed for right of way	75
	Supper at Vinton	50
	At Oelwine	25
	Supper, lodging, breakfast, and dinner	1 25
	Team to Carswell and back to Union	2 50
	Total	37 50
	Three days' board at West Union, $3; making deed, 75 cts.; team, $1.50	5 25
		43 10
	Less payment by Rowley	10 00
		33 10

Approved for payment:

GEN'L SUP'T.

Received April 7, 1875, of the Burlington, Cedar Rapids & Minnesota Railway Company thirty-three and $\frac{10}{100}$ dollars ($33.10), in full for the above account.

C. C. COOK.

Correct:

C. C. COOK,
Right of Way Ag't.

Examined by me and found correct.

AUDITOR.

Approved:

J. W. TRAER,
JNO. F. ELY,
Trustees.

358 EXHIBIT No. 39.

Assignment of Assets.

Whereas I have this day sold to Mrs. A. D. Traer, through her agent, J. W. Traer, that portion of the assets of the Cedar Rapids Northwestern Construction Company covered by the shares of stock standing in my name, except the amounts claimed of the B., C. R. & M. Railway Company, and for the securing of which I still retain the certificates Nos. 9, 10, 11, and 29 in my possession:

Now, therefore, I hereby agree, as soon as settlement on judgment with the railway company is secured, and the proportion due on my stock is paid over, whether in money, stock, or bonds, subject to proportion of costs of recovery, legal and otherwise, heretofore and hereafter incurred by the trustees, that I will deliver the certificate of stock to Mrs. Traer. In the mean time I hereby authorize and direct the trustee to pay over any and all dividends, uncollected assets, and choses in action to the said A. D. Traer, in consideration of fifteen hundred and twenty-five dollars, received in full consideration for my equitable interest in same, with the above exception.

Witness my hand, July 7, 1876.

D. W. C. ROWLEY.

Enclosed assignment of assets C. R. N. W. Construction Company acc't, thirty shares of stock.

D. W. C. ROWLEY.

July 7, 1876. Filed.

J. W. TRAER, *Trustee.*

EXHIBIT No. 40.

Same as Exhibit No. 24.

EXHIBIT No. 41.

Same as Exhibit No. 23.

359 EXHIBIT No. 42.

Same as Exhibit No. 20.

EXHIBIT No. 42 (A).

Note of the C. R. N. W. Construction Company to J. F. Ely for $2,560.00, date June 20, 1874, due 4 months, with ten per cent. interest, endorsed with $1,000, paid February 8th, 1875.

EXHIBIT No. 43.

Note of Construction Company to J. W. Barnes for $200, dated Dec. 20th, 1873, due 8 months, with interest at ten per cent., endorsed "J. W. Barnes."

EXHIBIT No. 44.

Note of Construction Company to James J. Warren, $800, August 20th, 1874, due 3 months, 10 per cent. interest, endorsed by said Warren to H. B. Stibbs.

EXHIBIT No. 45.

Note of Construction Company to S. L. Dows, $700, August 20th, 1874, 3 months, 10 per cent. interest.

EXHIBIT No. 46.

Voucher same form as Exhibit 25, for bills payable to order of S. L. Dows, August 20th, 1874, due Nov. 20th, 1874, $700, 10 per
360 cent. interest, $45.50; bills payable to order of J. W. Barnes Dec. 20, 1878, 8 months, $200, 10 per cent. interest, $26.39; bills payable to James J. Warren, August 20th, 1874, due 3 months, $800, 10 per cent. interest, $52.22; bills payable J. F. Ely, June 20th, 1874, due October 20th, 1874, $1,560, interest, $318.06; total, including interest, $3,578.06, signed "H. B. Stibbs, c'sh.," dated April 15th, 1875, approved by Ely and Traer, trustees.

EXHIBIT No. 47.

Assignment of Assets C. R. N. W. Cons. Co.

Whereas I have this day sold to Mrs. Alla D. Traer that portion of the assets of the C. R. N. W. Construction Company covered or held by virtue of seventy shares of stock now held by me, but of which ten shares are standing in the name of George H. Ely on books of trustees, and remainder in my name, excepting from said assets the proportional part of the claim against the B., C. R. & M. R'y Company, subject to and to be less the proportion of costs and attorneys' fees, expenses heretofore incurred, and for which purpose the stock certificates No. ——— are still held by me: Now, therefore, I hereby agree, as soon as settlement by judgment or otherwise is secured with said company, and the proportion due on said mentioned stock is paid over, whether in money, stock, or bonds, subject to costs heretofore and hereafter incurred, attorneys' fees, and expenses, that I will transfer and deliver certificates to Mrs. A. D. Traer, or her assignees, in consideration of thirty-five hundred dollars, received in full for my equitable interest in all assets of said company, with the above exception. And I hereby authorize the trustees to transfer and pay over to her order all rights, choses in action, moneys, or credits of whatever kind in their custody or control.

Witness my hand, Dec. 28th, 1876.

JNO. F. ELY.

Endorsed as follows: Assignment of assets C. R. N. W. Construction Company from Jno. F. Ely, 60 shares; George H. Ely, 10 shares. Dec. 28th, 1876. Filed Dec. 28th, 1877. J. W. Traer, trustee.

361 EXHIBIT No. 48.

Guarantee same form as Exhibit 24, date Dec. 28th, 1876, signed by John F. Ely, guaranteeing to Mrs. Traer the stock mentioned in Exhibit 47 against claims of the B., C. R. & M. R'y Company.

EXHIBIT No. 49.

Stock certificate No. 9, for 10 shares C. R. N. W. Construction Company stock to D. W. C. Rowley, assigned on the back by said Rowley to Mrs. A. D. Traer July 7, 1876.

EXHIBIT No. 50.

Stock certificate No. 29, 5 shares to John S. David, endorsed "paid in addition to the within fifty-five per cent., including the assessment for August, 1873," assigned by said David Dec. 3, 1874, subject to the credit of all dividends to date to D. W. C. Rowley, by said Rowley assigned to Mrs. A. D. Traer July 7, 1876.

EXHIBIT No. 51.

Certificate No. 10, D. W. C. Rowley, 10 shares, by said Rowley assigned July 7, 1876, to Mrs. A. D. Traer.

EXHIBIT No. 52.

Certificate No. 11, 5 shares to D. W. C. Rowley, assigned by said Rowley to Mrs. A. D. Traer July 7, 1876.

362 EXHIBIT No. 53.

OFFICE OF THE C. R. N. W. CONST. CO.,
CEDAR RAPIDS, *Nov.* 1, 1873.

At a meeting of the board of directors, this day, there were present: Jno. F. Ely, pres.; Jas. L. Bever, J. W. Traer, Wm. Greene, and D. W. C. Rowley.

On motion, the following resolution was adopted:

Resolved, That S. L. Dows, A. S. Belt, and Jas. L. Bever be a committee to present the claims of this company to the Burlington, Cedar Rapids and Minnesota Railway Company for damages arising out of a failure on their part to fulfill certain engagements and contracts with this company in the year 1872 and 1873.

On motion, adjourned.

D. W. C. ROWLEY, *Sec.*

OFFICE C. R. N. W. CONST. CO.,
CEDAR RAPIDS, *Dec.* 15*th*, 1873.

Directors' meeting convened at the call of the president, Dr. John F. Ely. Present: Jno. F. Ely, Wm. Greene, and D. W. C. Rowley.

On motion of Wm. Greene, resolved, that a dividend of twenty per cent. be made on the capital stock of this company.

Adjourned.

D. W. C. ROWLEY, *Sec.*

EXHIBIT No. 54.

OFFICE OF C. R. N. W. CONS. CO.,
CEDAR RAPIDS, *Jan.* 31, 1874.

At a meeting of the stockholders of this company, held this day, there were present: Dr. Jno. F. Ely, president; Geo. Greene, S. L. Dows, W. W. Walker, E. M. Greene, Wm. Greene, and D. W. C. Rowley.

Report of general agent, Traer, was presented in regard to the assets of the company in local and agreeable to a resolution of October 15th last. Also an application for increase of salary was made by him, all of which was referred to a committee consisting of S. L. Dows, D. W. C. Rowley, and A. S. Belt.

363 On motion, resolved, that a dividend of five per cent. be made on the capital stock of this company.
On motion, adjourned.

D. W. C. ROWLEY, *Sec.*

EXHIBIT No. 55.

Cash. 247

1874.				
M'ch 3	154	* * *		
" 4	48	* * *		
5	98	* * *		
14	150	* * *		
	196	* * *		
	40	* * *		
16	178	Henry Clews, 1468		
		P'd M. W. R'y Const. Co	2,000 00	
17	54	* * *		
19	138	* * *		
	126	* * *		
21	163	* * *		
21	99	* * *		
	162	* * *		
			3,849 90	

EXHIBIT No. 56.

Cash. 223

1873.				
Dec. 20		Am't bro't for'd		26,275 61
	190	N. B. Squires, Div. 1360		3,000 00
		3 notes, 1,000 each, 6, 7, & 8 mo.	3,000 00	
	188	Jas. L. Bever, Div. 1361		4,000 00
		Assess d'fts	1,200 00	
		3 notes, 800, 1,000, 1,000, 6, 7, & 8 mo.	2,800 00	
		Afterwards the division was thus:		
		2 notes, 500 each, 4 & 5 mo.		
		3 " 600 " 6, 7, & 8 mo.		
	190	S. H. Kneeland, Div. 1362		4,000 00
		Assess d'fts	1,200 00	
		2 notes, 1,400 each, 7 & 8 mo.	2,800 00	
	187	J. W. Traer, Div. 1363		4,000 00
		Assess d'fts	400 00	
		5 notes, 720 each, 4, 5, 6, 7, & 8 mo.	3,600 00	
	191	A. H. Spangler, Div. 1364		1,000 00
		Assess d'fts	300 00	
		5 notes, 4, 5, 6, 7, & 8 mo., 140 each	700 00	
	186	W. W. Walker, Div. 1365		2,400 00
		Assess d'fts	2,400 00	
	192	Jas. J. Warren, Div. 1366		4,000 00
		5 notes, 4, 5, 6, 7, & mo., 800 each	4,000 00	
				48,765 61

364 EXHIBIT No. 57.

Cash. 225

1873. Dec. 20		Am. bro't for'd		48,675 61
	196	T. W. Barhydt, Div. 1367		1,000 00
		Assess d'fts.		
		Notes, 4, 5, 6, 7, & 8 mo.	1,000 00	
	197	J. W. Barnes, Div. 1368		1,000 00
		Assess d'fts.		
		Notes, 4, 5, 6, 7, & 8 mo.	1,000 00	
	194	W. H. Pettibone, Div. 1369		1,000 00
		Assess d'fts	700 00	
		Note, 4 mo.	300 00	
	181	Geo. Greene, Div. 1370		26,000 00
		Assess d'fts	6,700 00	
		Notes, 4, 5, 6, 7 & 8 mo.	19,300 00	
	180	Wm. Greene, Div. 1371		9,000 00
		Assess d'fts	4,500 00	
		Notes, 4, 5, 6, 7, & 8 mo.	4,500 00	
	179	John F. Ely, Div. 1372		12,000 00
		Assess d'fts	1,200 00	
		Notes, 4, 5, 6, 7, & 8 mo., 2,160 each	10,800 00	
		One of these five notes divided as follows: 1,100 1,060 2,260		
				98,675 61

EXHIBIT No. 58.

Cash. 227

1873. Dec. 20		Am't bro't for'd		98,675 61
	189	Geo. H. Ely, Div. 1373		2,000 00
		Notes, 4, 5, 6, 7, & 8 mo.	2,000 00	
	185	S. L. Dows, Div. 1374		8,000 00
		Assess d'fts	5,400 00	
		Notes, 4, 5, 6, 7, & 8 mo.	2,600 00	
	193	John S. David, Div. 1375		1,000 00
		Notes, 4, 5, 6, 7, & 8 mo.	1,000 00	
	184	D. W. C. Rowley, Div. 1376		5,000 00
		Assess d'fts	2,500 00	
		Notes, 4, 5, 6, 7, & 8 mo.	2,500 00	
	183	A. S. Belt, Div. 1377		1,400 00
		Assess d'fts	1,400 00	
	182	E. M. Greene, Div. 1378		1,000 00
		Assess d'fts	500 00	
		Notes	500 00	
				117,075 61

365 EXHIBIT No. 59.

Stock certificate No. 36, 50 shares to Union Savings Bank, assigned January 2, 1877, to S. L. Dows, endorsed: "Presented by S. L. Dows

Jan. 2, '77, and accompanied with assignment in separate agreement filed with trustee of all equity in assets held by company, except right to proportionate amount of am't claimed by railway company, see terms of ass'm't, said sale of and ass'm't of assets being made to Mrs. A. D. Traer subject to its terms. Parties recog. will take notice of her rights. J. W. Traer, trustees for stockholders." Assignment on the back dated Jan. 23, 1877, by S. L. Dows to H. B. Stibbs, "in accordance with agreement made this 22d day of Jan'y, 1877," and constituting J. W. Traer, attorney, to transfer said stock on the books of the company.

EXHIBIT No. 60.

Same as Exhibit No. 18.

EXHIBIT No. 61.

Same form as Exhibit 24, being guarantee to Mrs. Traer of peaceable and legal possession of assets represented by stock referred to in Exhibit 18, against claims of B., C. R. & M. R'y Co., signed by S. L. Dows, Jan. 2, 1877.

EXHIBIT No. 62.

Stock certificate No. 37, ten shares to W. W. Walker, endorsed "In addition to the within there has been paid on this certificate fifty-five per cent., Feb. 10, 1875. D. W. C. Rowley, Sec.," by said Walker, assigned in blank, March 19, 1875.

366 EXHIBIT No. 63.

FEB. 20, '75.

Memorandum of the stockholders of Cedar Rapids Northwestern Const. Co. at above date:

Geo. Greene	135	shares.
H. Clews	50	"
Wm. Greene	55	"
Jno. F. Ely	60	"
S. L. Dows	50	"
D. W. C. Rowley	30	"
J. J. Warren	20	"
J. W. Traer	30	"
J. L. Bever	25	"
N. B. Squires	15	"
E. M. Greene	5	"
G. H. Ely	10	"
J. W. Barnes	5	"
W. H. Petibone	5	"
T. W. Barhydt	5	"
	500	"

EXHIBIT No. 64.

Stock certificate No. 40, 50 shares to Henry Clews, endorsed "In addition to the within there has been paid on this certificate fifty-

five per cent. Cedar Rapids, Feb. 2, '75. D. W. C. Rowley, Sec.," and—

"For value received I do hereby sell, assign, and transfer to *Alla D. Traer* 50 shares of the within-mentioned capital stock, *together with all rights and dividends declared, J. N. T.*, and do hereby constitute and appoint —— ———, attorney, to transfer the said stock on the books of the company.

Dated *M'ch 4th*, 1876.

HENRY CLEWS,
Per J. NELSON TAPPAN,
Trustee.

In presence of—
R. A. SOUTHWICK."

(The words and figures in italics are written, the rest printed.)

367 EXHIBIT No. 65.

28. *Cash.*

1875.			Am't for'd		22,612 98
Dec.	22.	1	Texas, Fayette Co.		2,008 00
			Per treasurer.		
"	24.	6	Traer R. E. notes		50 00
			No. 94 McDonald.		
"	"	17	Int. acc't		5 40
"	"	28	Hazleton real estate		35 90
			R. E. K., 511	25 90	
"	27.		A. N. E., 510	10 00	
"	27.	22	Milwaukee Div'n		200 00
			Dr'ft McGlathey in settlement.		
			Oelwine claim.		
1876.					
Jan.	1.	6	Traer R. E. notes		75 00
			No. 101 Huff.		
"	"	17	Int. acc't Huff, 6.80, 8.33		15 13
"	1.	8	Traer real estate		100 00
			C. 512 K. in cash.		
"	1.	12	Greene real estate notes.		
			No. 41 P.		
"	10.	17	Int. acc't. Extra No. 76	15 37	
			No. 24 to July 11, '76	34 30	
					49 67
"	10.	12	Greene R. E. notes		130 00
			No. 24	100	
			179 P. N.	30	
					25,582 08

368 29.

Cash. Cr.

1875.			Am't for'd		11,266 16
Dec.	28.	30	Bills payable	52 & 53	1,000 00
			J. J. Warren	800	
			J. W. Barnes	200	
		16	Interest acc't J. J. W.	52 & 53, 121 56	
			J. W. B.	40 39	
					161 95
		35	Salary acc't	54	75 00
			J. W. T., for Dec., '75.		
1876.					
Jan.	1.	32	Expense acc't.		
			Vouchers, incidentals, June to Jan.	59	31 95
	10.	32	Expense acc't	56	
			Services '73, '74 & '75 in Co. business	620 00	
			Traer & Burnham, Benton Co. cases, 53 in No.	225 00	
					845 00
1878.					
Dec.	28.	32	Expense account.		
			Recording	55	
			At Toledo and elsewhere		11 25
					13,391 31

369 30.

Cash. Dr.

1876.			Am't for'd		25,582 08
Jan.	11.	28	Hazleton real estate		10 00
			Cans, 513.		
"	20.	12	Greene real estate notes.		
			No. 120	68 20	68 20
		17	In't acc't, No. 120		8 00
"	11.	6	Traer R. E. notes		25 00
			No. 98 in Ray.		
"	"	17	Interest acc't		2 55
"	27.	6	Traer R. E. notes		59 00
			No. 45, J. Hoy.		
"	"	17	Interest acc't		12 12
"	21.	10.	Greene real estate		5 00
			No. 514, Cont. Pt.		
Feb.	11.	12	Greene R. E. notes		40 00
			No. 1, Arnold.		
"	"	17	Interest acc't		18 10
"	15.	6	Traer R. E. notes		88 00
			No. 77–8.		
"	"	17	Interest acc't		13 60
"	15.	12	Greene real estate notes		100 00
			No. 15.		

1876.				
Feb.	15.	12	Interest acc't	27 19
"	17.	8	Traer real estate	50 00
			Cash paym't, 516.	
				26,108 75

370 *Cash.* Cr.

1876.			Am't for'd	13,391 31
Jan.	1.	38	Dividend acc't 57, 58 & 60	2,000 00
			1st div'd by trustees.	
Jan.	27.	32	Expense acc't.	
			Voucher 61	
			Costs in court and recording	6 00
Feb.	17.	32	Expense acc't.	
			Incidentals 62	85 40
"	26.	32	Expense acc't 63	
			Wm. Nevin acc't, voucher certified by sect.	
"	"	32	Expense acc't 65	6 58
			Taxes in Butler county.	
"	26.	32	Expense acc't 66	
			Fees Hubbard, Clark & Deacon—U. S. court	250 00
				15,757 27

371 32. *Cash.*

1876.			Am't for'd	26,108 75
Feb.	25.	12	Greene R. E. notes	41 50
			No. 179, B. A.	
"	"	17	Int. acc't	2 15
M'ch	1.	1	Taxes, Fayette county	50 00
			Per treas.	
Nov.	20.	6	Traer R. E. notes	30 00
			P'd No. 27.	
M'ch	2.	20	Pacific Div. notes	680 00
			H. D. Gay & Co., 390, 290.	
"	"	17	Int. acc't	204 00
"	9.	6	Traer R. E. notes	15 00
			B. A., No. 65.	
"	"	17	Int. acc't	13 57
"	11.	15	Maynard real estate	45 00
			Sale 519.	
"	11.	28	Hazelton real estate	25 00
			Sale 520.	
"	11.	24	Bills rec. M. L.	75 00
			List 2, J. W. Ray, B. A.	
"	"	17	Int. acc't	70 86
"	14.	12	Greene real estate notes	5 00
			B. A., No. 56.	
"	"	18	Int. acc't	16 00

1876.				
M'ch	21.	8	Traer real estate ---------- 4 & 8, B. 8.	00 00
"	21.	8	Taxes, Tama county ----------	61 92
				27,443 75

372 33.

Cash. Cr.

1876.			Am't for'd ----------	15,757 27
Mc'h	1.	32	Expense acc't. Taxes, Tama county, for 1875 ----64	118 14
"	"	34	Salary acc't Jan. & Feb.----------67	
			Coll. agent 2 Mo. ----------	150 00
"	"	32	Expense acc't----------48	8 45
			Voucher for recording & in Butler county.	
Feb.	23.	32	Expense acc't ----------1	316 00
			Jno. N. Rogers' fees as referee in Benton county cases.	
"	"	32	Expense acc't----------5	144 94
			E. Wilson, recording ----------30 00	
			S. R. Jones, sheriff costs---------21 15	
			S. W. Herrick, serv. 5----90.00, 93 75	
			C. W. Brownwell 5*a*----------3 79	
Mc'h	9.	34	Salary acc't ----------4	100 00
			D. W. C. Rowley, Feb., Mc'h, 1875.	
"	13.	35	Right of way----------6 & 7	300 00
			S. E. Keith----------6 & 7	
"	13.	32	Expense acc't----------8	28 56
			Taxes, Tama county, '74.	
		30	Bills payable ----------57	
			Voucher R. of W.	
"	"	16	Int. acc't ----------57	169 50
"	"	34	Salary acc't trustees' year----------58	600 00
			Ending M'ch, '76.	
				18,242 86

373 34.

Cash.

1876.			Am't for'd----------	$27,443 75
		20	Pacific Div. notes (collected by Traer & Gilchrist)----------	4,321 20

	Prin.	*Int.*
H. Beversham----------	$100 00	$31 85
T. S. Palmer ----------	400 00	113 10
M. Meredith ----------	70 00	22 28
S. A. Knapp----------	100 00	31 96
A. A. Wentz ----------	70 00	22 49
A. Ron----------	125 00	33 46
M. Donalson ----------	50 00	15 96

			Prin.	Int.	
Adler & Stearn			$50 00	$16 00	
S. H. Watson			1,250 00	403 76	
Jno. Gilman			50 00	16 13	
Ellis Bros.			400 00	129 47	
Jno. Beebe			200 00	64 49	
Jas. Carrich			65 00	22 08	
C. V. Mount			100 00	32 34	
J. A. Bills			50 00	16 17	
J. W. Barr			46 20 pt.		
Wm. Potterfield			100 00	13 94	
D. Stick			190 00	59 68	
O. Stone			200 00	62 98	
G. W. Freeman			100 00	31 50	
G. N. Ridge			50 00	15 72	
J. Pierce			100 00	31 23	
L. Reed			75 00	23 85	
C. W. Lawton			35 00	11 19	
J. B. Locke			150 00	48 75	
J. B. Sands			30 00	8 75	
Porter & Co.			90 00	30 90	
T. B. Wully			75 00	24 58	
W. B. Vanhorn			50 00	16 30	
H. Springer			50 00	16 45	
	18	Int. acc't		$1,367 36	$1,367 36
					$33,132 31

374 *Cash.* 35.

1876.		Am't for'd		$18,242 86
M'ch 2.	32	Expense acc't ---68		185 76
		Taxes, Butler county, 1875, 145.86, 39.90		
" 13.	32	Expense acc't ---37		10 00
		Error in am't of voucher No. 37, Hubbard & D.		
" 20.	38	Dividend acc't		10,500 00
		Old dividend acc't ctf. 48, Clews, as per statem't sec. filed this day.		
" 20.	16	Interest acc't allowed on same		1,413 75
" "	1	Taxes ---71		
		Taxes on list for 1875		69 07
				30,421 44

375 36. *Cash.*

1876.		Am't for'd	33,132 31
M'ch 23.	20	Pacific Division notes	260 00

List of Vinton.

				P.	I.	
			M. Donahue, Jr.	15 00		
			S. A. Marine	25 00	7 96	
			H. B. Clingan	100 00	36 07	
			J. P. Klemm	95 00	32 27	
			F. M. Webb	25 00	8 45	
				260 00	84 75	
		18	Int. acc't above			84 75
April	1.	12	Greene R. E. notes			50 00
			126, 25; 134, 25.			
"	1.	18	Int. acc't			4 20
"	1.	4	Dysart R. E. notes			
			R. Manil No. 3			65 00
"	1.	18	Int. acc't			7 50
"	1.	20	Pacific Division notes			210 00
			List 12, Rogers	10	2 30	
			Est. Emmitt	100	16 86	
			Stokes	100	23 34	
				210	42 50	
"	1.	18	Int. acc't			42 50
"	10.	28	Hazelton real estate			20 00
			Sale 532 cash.			
"	10.	10	Green real estate			2 00
			Pt. on 523, 524.			
"	10.	28	Hazelton real estate			10 00
			Sale, 525.			
"	24.	12	Greene R. E. notes			35 00
			132.			
"	24.	18	Int. acc't			2 50
						33,925 76

376 38. *Cash.* Dr.

1876.			Am't for'd	33,925 76
Ap'l	26.	7	Traer R. E. notes	140 00
			No. 21, 75.00.	
			No. 50, 65.00.	
"	"	18	Int. acc't	16 37
"	26.	7	Traer R. E. notes	180 00
			61, 100; 104, 80.	
"	"	18	Int. acc't	37 09
			20.40, 8.44, 8.25.	
"	"	8	Traer real estate	32 00
			Cash from sales by Rogers, 529 & 535.	
"	"	22	Milwaukee Div'n	12 64
			Cash from Lake p'd on taxes.	
May	2.	12	Greene real estate notes	150 00
			113 & 114. 50, 100.	

1876.					
May	2.	18	Int. acc't		20 00
"	"	10	Greene real estate		30 00
			Cash pt., 539, 5.00; 541, 25.00.		
"	8.		Hazelton aid notes		00 00
"	"	28	Hazelton real estate		25 00
					34,508 86
377		1876.	*Cash.*		37
			Am't for'd		30,421 44
Ap'l	1.	34	Salary acc't 72		125 00
			J. W. Traer for M'ch, 1876, treasurer & coll. agt.		
Ap'l	13.	38	Dividend acc't		2,000 00
			2d made by trustees @ 4.00 per share.		
Ap'l	24.	32	Expense acc't 73		156 37
			Commissions of W. Rogers to date. See voucher 73.		
					32,702 81
			Cash.		Cr. 39
1876.			Am't for'd		32,702 81
Ap'l	28.	32	Expense acc't		17 96
			Taxes. Voucher 74.		
			No. 77 4 64		
			67 68		
			1771 12 64		
May	2.	33	Expense acc't 76		170 00
			Com'ns to Goesbe on sales & coll'ns at Greene. See voucher 76		
		34	Salary acc't		125 99
			April pay J. W. T.		
					33,015 77

378

EXHIBIT No. 66.

Stipulation for continuance of taking depositions.

EXHIBIT No. 67.

Voucher dated Feb. 28, 1877, for services rendered and to be rendered by D. W. C. Rowley in making up statements from old Co. books for the use of attorney in case of lien against the B., C. R. & M. R'y Co., and in defense of original bill, etc., $30,00, signed " D. W. C. Rowley."

EXHIBIT No. 68.

Voucher for D. W. C. Rowley's salary as secretary and accountant in full to March 1st, 1875, as per records of the company of date Feb. 15, '75, p. 41, $100, signed " D. W. C. Rowley," dated March 9, 1875, approved by Ely and Traer, trustees.

1. Dr. *Traer Brothers, in account* *With C. R. N. W. Cons. Co.* Cr. 2.

1876.					1876.			
Jan.	3.	Berbesheimer judg't, pr.	121 98		Jan.	7.	To ch.	719 50
		Int.	9 87		Jan'y	10.	" " T. & B.	220 00
				131 85	"	"	" " T. & G.	620 00
"	5.	J. S. Pal. judg't, 475.29; int., 39.81		513 10				
"	"	Meredith " 85.38; int., 6.90		92 28				
"	6.	S. A. Knapp, 121.98; int., 9.98		131 96				
"	7.	H. D. Gey, 390; 117		507 00				
"	"	McDaniel, 290; 87		377 00				
"	"	Wentz, 85.39; 7.10		92 49				
"	"	Rose, 146.46; 12.06		158 46				
"	"	M. Daulu, 60.99; 4.97		65 96				
"	12.	Adler & Steer, 60.99; 5.02		66 00				
"	14.	S. H. Watson, 1,526.39; 127.37		1,653 76				
"	15.	J. Gilmore, 60.99; 5.14		66 13				
"	19.	Ellis, 487.88; 41.59		529 47				
"	"	Beebe, 243.96; 20.53		264 49				
"	"	Carrick, 80.27; 6.81		87 08				
"	"	Mount, 121.98; 10.36		132 34				
"	"	Bills & Co., 60.99; 5.18		66 17				
				4,935 54			To next page	1,559 50

380 3.

		Am't forward	4,935	54
Ja'y	21.	J. W. Barr, part	46	20
"	"	Wm. Porterfield	47	70
"	"	Stock judg't, jug., int., & costs	268	48
"	"	C. Stone, " 243.96; 19.02	262	98
"	"	G. W. Freeman, jug., 121.27; 9.54	131	51
"	"	G. W. Ridge, 60.99; 4.73	65	72
"	"	J. Ream, 121.48; 9.75	131	23
"	"	L. Reed, 91.48; 7.37	98	85
"	"	C. W. Lanton, 42.71; 3.48	46	19
"	24.	J. B. Lock, 182.97; 15.78	198	75
"	"	J. B. Sanders, 36.59; 2.16	38	75
"	27.	Porter & Co., 111.53; 9.37	120	90
"	"	Porterfield, 60.99; 5.25	66	24
"	28.	G. W. Pence, costs ref.	10	40
"	29.	T. B. Wully, 91.84; 7.74	99	58
			6,569	02

4.

Am't forward	1,559	50
Balance	5,009	52
	6,569	02

381 5.

Dr. *Traer Bros.*

1876.			
Feb'y 11.	W. B. V.		66 30
March 1.	H., Springer, judg't, 60.99; int., 5.40		66 45
" 8.	M. Donahue, Jr., (5,142.27)		15 00
" 10.	Marine		32 96
" 15.	Clingan		136 07
" "	Klenne		127 27
" "	T. M. Webb		33 45
Feb'y 11.	To balance		5,009 52
M'ch 22.	" cash		5,426 73
" 20.	" "		1,000 00
			11,913 75

6.

C. R. N. W. Const. Co. Cr.

1876.			
M'ch 20.	To cash		11,913 75
	Balance		000 00
			11,913 75

382 *Exhibits to Tappan's Deposition.*

EXHIBIT No. 1.

CEDAR RAPIDS, IA., *Feb.* 14, 1876.

J. NELSON TAPPAN, Esq., *Trustee Estate Henry Clews & Co.*

D'R SIR: Enclosed find draft of $200, being first dividend made by trustees of Cedar Rapids North Western Construction Company on 50 shares of stock standing in name of Henry Clews (no certificate was issued), the equity of which is now in your hands. This arises from odds and ends placed in hands of trustees here on the dissolution of the company, February, 1875, for a final collection and closing up. The ultimate result in closing up we think will pay in small instalments from $8.00 to $12 per share, but will necessarily be very slow in coming, unless some other than the usual routine of collection is adopted. Will be glad to be advised of your wishes. Please return a formal receipt in shape for filing.

Respectfully yours, J. W. TRAER, *Trustee.*

EXHIBIT No. 2.

J. NELSON TAPPAN, *Trustee in Bankruptcy of Henry Clews & Co.:*

In answer to inquiry as to assets in hands of trustees of the Cedar Rapids North Western Construction Company, would say: The company disbanded their organization February, 1875, leaving the odds and ends in the hands of myself and Dr. J. F. Ely to dispose of in the best manner possible, and to discharge first legal debts of the company, and lastly to divide any proceeds *pro rata* among the stockholders. There being 500 shares, originally $1,000 each. The assets are of avery mixed character, largely in litigation.

383 We have paid about $12,000 of indebtedness and expenses and have made one dividend of $4 per share, which entitles the equitable interest of Henry Clews to 200. The ultimate adjustment of the indebtedness involved in the company agreement to furnish right of way to the railway company, and other unadjusted, will probably foot up $15,000. The assets were originally as good for $35,000 to $50,000, allowing for reasonable services in collecting and realizing, and no litigation adverse to the company's original contract outside of assets and growing out of cross-bills in cases being litigated by the B., C. R. & M. R'y Company, explanation of which I have given your Mr. Southwick. On my return home I will remit the dividend, and if I can facilitate the closing out of the interest in any way, please command me.

With respect, yours. J. W. TRAER, *Trustee.*

Cedar Rapids, Iowa, Feb. 4. 1876.

(Endorsed.)

FEBRUARY 7TH, 1876.

At suggestion of Mr. Traer, wrote to Jas. L. Bever, City National Bank, Cedar Rapids, Iowa, asking his opinion as to value of within mentioned assets.

R. A. S.

EXHIBIT No. 3.

Card of Traer Brothers, bankers, Vinton, Iowa, J. C. Traer, J. W. Traer, marked "J. W. T."

EXHIBIT No. 4.

Same as Exhibit E to Traer's deposition.

384 EXHIBIT No. 5.

J. W. TRAER. February 4, 1876.

Traer's handwriting. Practic'ly worthless.	Blackhawk county				$190 48
	Shellrock, Bl'k Co.				250 00
	" " "				
	Butler	"			1,284 99
	"	"		Matured in	878 00
	"	"	1871; notes and pledge		295 00
	"	"	small percentage		145 00
	"	"			63 00
	Floyd	"			1,384 73
	"	"	The same		560 00
	Benton	"	Will recover 70 per cent.		11,650 65
	Tama	"			450 00
	"	"	About same		1,945 50
	"	"			3,005 00
Traer's h'ndwri'g	Fayette	"			12,504 82
	☞		Voided by terms of sub.		14,979 72
	Buchanan				323 00
	"		Will recover some 40 per ct.		115 00
1	Town lots, 80 per cent.				975 00
2	" " "				9,315 00
3	" 60 "				24,984 13
4	" 40 "				2,730 00
5	" 100 "				400 00
Traer's h'ndwri'g					74,883 80
			Worthless and loss deduct'd		39,010 72
					35,873 08
	Taxes uncollected (*which haven't been since collected*)				10
					45,873 08

Of these taxes there have been since collected about $5,000; have paid about $12,000 of indebtedness and expenses and $2,000 dividend.

This list of property was furnished by J. W. Traer to trustee, as representing all the stockholders are entitled to.

(The words and figures in italics have a line drawn through them in the original.)

EXHIBIT No. 6.

Same as Exhibit 31.

385 EXHIBIT No. 7.

Same as Exhibit No. 32.

EXHIBIT No. 8.

NEW YORK, *February 26th*, 1876.

Mr. SOUTHWICK.

DEAR SIR: I am advised that the certificates for the shares held by Clews & Co. in the Cedar Rapids & N. W. Con. Co. have been forwarded and will probably reach here on Tuesday next, so that I think it advisible to postpone closing my purchase until it comes, so that the assignment may be endorsed upon the certificates. Hoping that this will be satisfactory,

I am, yours truly,

JAMES ARMSTRONG.

(Endorsed:) See book containing statement of securities of estate of H. C. & Co., page 92.

EXHIBIT No. 9.

Feb. 3d, 1876, J. W. Traer called at the office of the trustees of Henry Clews & Co., No. 7 Nassau St., New York, and introduced himself to Mr. Southwick. He stated that he resided at Cedar Rapids, Iowa; that he was trustee of the Cedar Rapids and Northwestern Construction Co., and said Co. had been wound up and dissolved. That at the time of dissolution he was made trustee to collect some odds and ends due the Co., such as notes of parties along the line of the road, some judgments, and taxes, and to settle some outstanding claims against the Co.; that as such trustee he had made certain collections; that at the urgent solicitation of some of the shareholders he had made a dividend of $2,000; that Mr. Clews' interest in said Co. was 50 shares, par value $1,000 each; that no certificate for said shares was ever issued to Clews, but he was, never-
386 theless, entitled to one for that amount of shares, and that Clews has never disposed of his interest therein; that the proportion of said dividend on said 50 shares is $200, which he would send the trustees on his return to Cedar Rapids, with a statement of matters since he assumed his trust.

The above is copied by me, this 13th day of Feb., 1876, from memoranda of conversation (in memorandum book) held with J. W. Traer Feb. 3d, 1876, and is a true copy.

R. A. SOUTHWICK.

FEB. 13, 1876.

James Armstrong, Esq., called on me at the office of trustees of Henry Clews & Co., No. 7 Nassau St., New York city, with the certificate of above-mentioned shares (viz., 50) of the stock of the Cedar Rapids Northwestern Cons. Co., in the name of Henry Clews, and stated that he was ready to pay $1,200, and desired a transfer of the certificate by J. Nelson Tappan, trustee, etc. I went with him to

see Mr. Tappan, who signed in my presence the printed transfer on the back of the certificate. This transfer was merely for said fifty shares of stock, and was made March 4th, 1876. It was clearly understood by the said trustee and myself that the said sale and transfer of said fifty shares of stock represented his interest existing March 4th, 1876, in the unsold odds and ends of the assets of the said Construction Co., then in the hands of J. W. Traer, and in accordance with the letters and statement of said assets made by said Traer to said Tappan.

Mr. Traer informed me expressly that no dividend had been declared by said Construction Co. since the same came into his hands as said trustee, other than the one of $4 per share mentioned in his conversation above given, and which he remitted to Mr. Tappan, trustee, viz., $200. He also informed me that said fifty shares of stock were entitled to no dividend or dividends except from moneys thereafter to be realized in the collection of said odds and ends of said assets of said Co., which ultimately might pay from $8 to $12 per share.

R. A. SOUTHWICK.

Office of the trustees of Henry Clews & Co., No. 7 Nassau St., room 2, N. Y. city.

387 EXHIBIT No. 9. (A)

CEDAR RAPIDS, *March* 7, 1876.

J. NELSON TAPPAN, *Trustee Estate of Henry Clews.*

DEAR SIR: Remembering your request for a proposition for the 50 shares C. R. N. Con. Co. stocks in your hands as trustee, I have succeeded in eliciting from Peter Martel, Esq., a proposition of $15.00 per share. This does not quite meet my estimate of its value given you, but is the best I find now.

Perhaps I can raise it enough to pay my commission for sale, which will be 3 per cent. If satisfactory advise promptly, and I will arrange payment through bank.

Respectfully yours,

J. W. TRAER.

EXHIBIT No. 10.

NEW YORK, *Feb.* 18, 1876.

J. W. TRAER, Esq.,
Trustee of the C. R. & N. W. Cons. Co., Cedar Rapids, Iowa.

DEAR SIR: Yours of the 14th inst. with enclosure of draft for ($200) two hundred dollars on acc't of dividend in the matter of the Cedar Rapids & N. W. Cons. Co., and for which I am obliged. Herewith find formal receipt for same.

Respectfully yours,

(Sg.) J. NELSON TAPPAN,
Trustee of Henry Clews & Co.,
Per R. A. S.

(Receipt referred to same as Exhibit K.)

Exhibits to Clews' Deposition.

EXHIBIT A No. 1.

$500.00. OFFICE OF THE C. R. N. W. CONST. CO.,
CEDAR RAPIDS, *Nov.* 1, 1873.

Pay to the order of Wm. Greene, treasurer, five hundred dol-
388 lars, being one per cent. of the first assessment of five per cent. on fifty shares of Cedar Rapids Northwestern Construction Company stock held by you.

D. W. C. ROWLEY, *Sec'y.*

To HENRY CLEWS, *New York.*

EXHIBITS A No. 2 TO A No. 29.

Same as the foregoing, except in amounts and dates.

EXHIBIT B.

Same as Exhibit 26 to Traer's deposition.

EXHIBIT C.

UNION BANK, CEDAR RAPIDS, IOWA,
April 24th, 1877.

HENRY CLEWS, Esq., *New York.*

DEAR SIR: In answer to yours of the 20th I am sorry to say it is not in my power to give you the information regarding dividends, etc., to the stockholders of the old Northwestern Const. Co. I have nothing but memory to rely upon, and disposed of my stock before the affairs of the company were closed up, over two years ago. J. W. Traer was appointed agent and trustee of the company about three years ago, and has all the books and records of the company. I have no doubt he can give you all necessary information. If you desire I will place your letter in his hands to answer, or you can correspond with him here direct.

Respectfully yours, WM. GREENE.

EXHIBIT D.

Same as Exhibit I to Traer's deposition.

389 EXHIBIT E.

Same as Exhibit A to plaintiff's petition, page 13, with acknowledgment dated December 14th, 1877.

EXHIBIT 1.

Same as Exhibit 2 to Tappan's deposition.

EXHIBIT No. 2.

Same as Exhibit E to Traer's deposition.

EXHIBIT No. 3.

Same as Exhibit 3 to Tappan's deposition.

EXHIBIT 4.

Same as Exhibit 5 to Tappan's deposition.

Plaintiff further introduced in evidence on rebuttal the record attached to depositions taken before R. H. Gilmore in May and June, 1879; also record of the *habeas corpus* proceedings before Hon. John McKean, June term, 1879, as follows:

RECORD.

Notice served on defendants May 22nd, 1879, to take depositions of J. C. Traer, H. B. Stibbs, George Greene, Wm. Greene, Jno. F. Ely, D. W. C. Rowley, J. L. Bever, and J. W. Traer, before R. H. Gllmore,
a notary public, on the 27th of May, 1879, at the office of
390 Gilmore, Clark & St. John, in Cedar Rapids, Iowa on behalf of plaintiff. Then follow the first deposition of D. W. C. Rowley and first deposition of J. F. Ely, both of which have been heretofore made part of the record. Then follow three adjournments from time to time until May 29, 1879, when both parties appeared by their attorneys, and said R. H. Gilmore, notary public, made the following entry:

And it further appearing that the said witness, J. C. Traer, had been duly served with subpœna and his fees tendered and paid, and it further appearing that the witness, John W. Traer, had been duly and personally served with subpœna and his fees tendered and refused to be received, motion was filed by the plaintiff's attorney asking for an attachment to compel the attendance of the witnesses, J. C. Traer and John W. Traer, in accordance with said subpœna and by virtue of the authority vested in notaries public, as provided by law. Thereupon the defendants, by their attorneys, filed objections to the issuing of said attachment, the motions and objections being hereto attached and made a part of this record. [A part of said objection is in substance as follows: Defendants, by their attorneys, object to the taking of the testimony of J. W. Traer or J. C. Traer in any manner before this commissioner, R. H. Gilmore, and to the issuing by this commissioner of any attachment or other process to compel the attendance of said J. C. or J. W. Traer before said commissioner for the purpose of taking his deposition in said cause for the reason that said commissioner, R. H. Gillmore, is the law partner of F. G. Clark, attorney for plaintiff in said cause; and further, because the sheriff's return on the subpœna does not show that J. W. Traer was tendered his fees and expenses.] The objections not being deemed sufficient I issued the attachment and caused the same to be placed in the hands of an officer for service. Then follow two adjournments until May 31, 1879.

Meantime said attachment so issued was served upon J. C. Traer and J. W. Traer May 29, 1879, at Vinton, Iowa, and on the same

day said J. C. and J. W. Traer presented to Hon. John McLean, circuit judge for the 8th judicial district of Iowa, their petition for a writ of *habeas corpus*, which writ was thereupon issued and made returnable before said judge in term time at Marion, Linn county, June 2nd, 1879.

391 May 31st, 1879, both parties appeared by their attorneys before said R. H. Gilmore, pursuant to adjournment, and the following entry was made by said commissioner:

And it being suggested by the plaintiff's attorney that the attachment had been served on J. C. Traer and J. W. Traer, and that the officer having such witnesses in charge had been ordered by the judge of the circuit court to produce the bodies of said witnesses before him Monday, June 2, 1879, on motion of plaintiff's attorneys I adjourned the said examination to Tuesday, June 3, 1879.

On said June 3, 1879, both parties appeared by their attorneys, and, by consent, further adjournment was had until June 10, 1879.

Meantime, upon the hearing of said writ of *habeas corpus*, said circuit court remanded said J. C. and J. W. Traer to the hands of the officer holding said attachment.

On the 10th day of June, 1879, said commissioner, R. H. Gilmore, made the following entry:

Pursuant to adjournment, the plaintiff appeared by Clark & Lynch, his attorneys, and the defendants by Hubbard & Clark, their attorneys, and the witness, John W. Traer, also appeared. The plaintiff asked that the witness, John W. Traer, be sworn. Thereupon the defendants objected to any further proceedings before this commissioner, and to taking any testimony before the said commissioner, for the reason that the defendants cannot be compelled to take testimony while the court is in actual session, and that it is immaterial, irrelevant, incompetent, and foreign to the issues, and for the reason that this commissioner, R. H. Gilmore, is the law partner of F. G. Clark, attorney for plaintiff. Thereupon the commissioner requested the witness to be sworn, and he declined, saying: "On the advice of counsel, I refuse to be sworn and testify." The plaintiff waives the appearance at this time of the witness, J. C. Traer. The plaintiff then offered to file a motion entitled a motion for commitment for contempt. The defendants objected to the same for the same reasons entered last above, and for the further reason that the defendant offers to be in attendance to be examined as a witness on the trial of this cause in open court. Subject to said objection, the motion

392 was filed. Thereupon the commissioner, after hearing argument by attorneys for each side, and being fully advised in the premises, sustained the motion of the plaintiff, and ordered that the said John W. Traer be committed for contempt until the said witness shall testify, as provided by law; to which action of the commissioner defendants then excepted and objected. The plaintiff then filed a motion for the issuance of a mittimus committing the said witness for contempt. Inasmuch as the question is a new one, and no precedent has been presented by either party as having

arisen in this State, and under the statute giving notaries public authority to issue subpœna and compel obedience thereto, and inasmuch as the court is now in session, and this question may there be submitted to the court for its action, the motion for a mittimus is overruled; to which action of the commissioner the plaintiff then and there excepted and objected. On motion of the plaintiff, the proceedings heretofore are hereby certified to the court for its action. Plaintiff gave notice that there would be on file to-morrow morning in the office of the clerk of the circuit court a motion asking that J. W. Traer be punished for contempt of the commissioner, and that exceptions to the action of the commissioner in overruling the application of the plaintiff for a warrant of commitment would be brought on for hearing and review. To all of which actions of the commissioner the defendants excepted. Pending the action of the court said examination is adjourned to June 13th, 1879. All of which is duly certified.

On said 13th of June, 1879, no witnesses appearing, the whole proceedings are certified to the court for its action, without any further action on the part of this commissioner.

Duly certified by said commissioner.

On the 11th day of June, 1879, plaintiff, pursuant to notice given before said commissioner, filed with the clerk of said court his motion, asking that said J. W. Traer be committed to the jail of Linn county, and renewing their motion that a mittimus be issued by said court to the sheriff, commanding him to keep said Traer in the jail of said county until he should consent to be sworn and testify before said commissioner, and asking that said court overrule and reverse the action of said commissioner in refusing the application of plaintiff for a warrant of commitment.

Afterwards, and on the 16th day of June, 1879, said J. W.
393 Traer filed his affidavit in resistance of said motion, as follows:

J. W. Traer, being duly sworn, deposes and says: That he is defendant in the above-entitled action and the person whom it is moved to commit for contempt for not testifying before R. H. Gilmore, a notary public; that he well knows the said Gilmore; that said Gilmore is a partner of F. G. Clark, plaintiff's attorney herein, and not, as affiant believes, a suitable or disinterested person to fairly and impartiality take affiant's deposition and report the same to this court.

Subscribed and sworn to by said J. W. Traer.

And thereupon said court, after argument on both sides, in consideration of the fact that court was in actual session at the time of the refusal to testify, and that said R. H. Gilmore was the law partner of plaintiff's attorney, overruled said motion, and by consent of parties the further taking of depositions in said cause was ordered to be had before C. J. Deacon, notary public, as shown by the following commission:

STATE OF IOWA, } ss:
Linn County, }

To C. J. Deacon, Esq., a notary public in and for said county:

This is to certify that you were duly appointed by the circuit court of the State of Iowa, in and for said county, on the 16th day of June, A. D. 1879, a commissioner to take the testimony of such witnesses as may be brought before you on subpœna by either party on ten days' notice by either party, at your office in Cedar Rapids, Iowa, to be used in the case of Henry Clews *vs.* J. W. Traer *et al.*, now pending in said court.

Witness my hand and the seal of said court, hereto affixed, this September 20th, 1879.

[SEAL.] GEO. L. STERNS, *Clerk.*

The foregoing depositions, exhibits, stipulations, and records are all the evidence that was introduced or offered by either party on the trial of said cause, and were duly certified to be such
394 by Hon. John McKean, judge of said court, on the 18th day of October, 1880.

On the 7th day of February, 1880, this cause was submitted to the court on the pleadings and evidence, and by consent of parties to be argued further in vacation and decision of judge to be entered in vacation as of the last day of this term, with right of either party to except and appeal.

Afterwards, on the said 7th day of February, 1880, the January term of said court adjourned *sine die.* The next following term of said court convened on the 7th day of June, 1880, and at said term of court on the 2d day of July, 1880, said court rendered and entered in this cause the following judgment and decree:

The January term of said court convened Jan. 5, 1880, & this cause was heard in the 5th & last week thereof.

This cause was submitted at the last term on pleadings and evidence and by consent to be argued further in vacation, as shown by the record entry, and on February 9th parties appeared before the undersigned, judge, etc., at Cedar Rapids, Gilmore, Clark & St. John for plaintiffs, and Hubbard & Clark for the defendants and the plaintiff asked and obtained leave to file an amendment to petition subject to the imposition of costs, to which the defendants excepted and plead and answer to same under protest. And thereupon the plaintiff filed a motion to exclude certain evidence, which is overruled and plaintiff excepted, said motion being in writing. And afterwards, and on April 2d, 1880, the case was, by consent as to the time and place of argument, fully, ably, and exhaustively argued by the respective counsel for plaintiff and defendants, and the case finally submitted after argument. And not being able to reach a conclusion in vacation the same is decided by the court in term on this July 2d, 1880. And it is ordered that the bill of plaintiff be dismissed as against all the defendants except J. W. Traer and Alla D. Traer, at plaintiff's cost, and he excepts; and that the plaintiff

shall have judgment against said J. W. Traer and Alla D. Traer, defendants, in the sum of fifteen thousand dollars and have execution therefor (both parties except, plaintiff and defendants), and
395, 396, 397 that plaintiff shall pay the one-half the costs (he excepts), and the defendants one-half the costs (they except), and it is ordered that the clerk enter judgment accordingly, and defendants Traer and plaintiff except. Sixty days allowed to settle bill of exceptions.

JOHN McKEAN, *Judge, etc.*

JULY 2D, 1880.

Afterwards, and on the 8th day of July, 1880, said defendants, J. W. Traer and Alla D. Traer, perfected their appeal to this court by serving upon plaintiff's attorneys and upon the clerk of said court their notice of appeal, which was afterwards filed with said clerk on said 8th day of July, 1880.

Judgment was afterwards superseded by said defendants' filing in the office of the clerk of said court their appeal bond, approved by said clerk.

398 And afterwards, to wit, on the 19th day of April, 1881, the appellee filed in the office of the clerk of said court an amendment to appellants' abstract of record; the same, with endorsement of service thereof, being in the words and figures following, to wit:

398½ Supreme Court of Iowa, October Term, 1880. At Dubuque.

HENRY CLEWS, Appellee,
vs.
JOHN W. TRAER & ALLA D. TRAER, Appellants; JOHN F. ELY, WILLIAM GREENE, & D. W. C. ROWLEY. } In Equity.

Appeal from Linn Circuit Court.

Clark and Lynch and R. H. Gilmore, attorneys for appellee.
Hubbark & Clark, attorneys for appellant.

Endorsed: "Due and legal service of the within amendment to appellants' abstract of record hereby accepted this 7th day of March, 1881. Hubbard & Clark, attorneys for appellant."

Appellee's Abstract of Record to Supply Omissions in Appellants' Abstract of Record.

On the 3rd day of February, A. D. 1880, the plaintiff filed
399 with the clerk of the circuit court of Linn county, Iowa, the certain affidavit of R. H. Gilmore, as follows:

HENRY CLEWS *vs.* JOHN W. TRAER *et al.*

R. H. Gilmore, being duly sworn, on oath states that he was not the attorney of the plaintiff at the time the depositions of D. W. C. Rowley and J. F. Ely were taken before him. That he had no in-

terest whatever at that time in the said action as attorney or otherwise. That he was not employed or retained in the said action nor had any intimation that he would or might be employed in any manner in said action until several months after the said depositions were taken, and after the agreement had been entered into between the parties hereto appointing C. J. Deacon, Esq., as commissioner to take depositions and the testimony for each of the parties in this action.

That at the time the said action was commenced the deponent was not a partner of Frank G. Clark, Esq., nor was the law partnership between the deponent and said Clark formed until said cause had been in progress for about a year. That the deponent had at the time no interest in any of the prospective or present profits of said Clark in any of the proceedings in said action. That said action was a matter entirely outside the partnership affairs of Gilmore, Clark & St. John, the firm of which the deponent was a member at the time said depositions were taken.

R. H. GILMORE.

400 Subscribed by said R. H. Gilmore, and by him sworn to before me, February 3rd, 1880.

GEO. L. STEARNS, *Clerk.*

On the 9th day of February, 1880, the plaintiff filed with John McKean, judge of the circuit court of Linn county, Iowa, a motion to exclude, as follows:

The plaintiff moves the court that certificate of stock of the Cedar Rapids Northwestern Construction Company No. 40, and the endorsement thereon, introduced by the defendants, subject to the objection of the plaintiff, be excluded on grounds as follows:

1st. It purports to be the original of the paper set out and exhibited as Exhibit "A and B" of the separate answer of Alla D. Traer; yet it is not such paper, but varies therefrom in a material matter.

2nd. It purports to be, yet it is not, the paper, a copy of which was served on the plaintiff's attorney, as certificate No. 40 aforesaid, and the endorsement alleged by the defendants to have been executed by one J. Nelson Tappan, and by him delivered to James Armstrong.

3rd. The writing on the back of said certificate No. 40 is not the endorsement alleged by defendants to have been executed by said J. Nelson Tappan, upon which defendants claim title to the dividends and the assets of said company belonging to the estate of Henry Clews in bankruptcy.

401 4th. Since the said separate answer of defendant, Alla D. Traer, was signed and sworn to, and the said Exhibit "B" was attached thereto, the writing on the back of said certificate No. 40 has been materially changed, altered, and mutilated by inserting the figures "50" before the word "shares."

5th. It appears from the admissions of the pleadings of the defendants that since the said endorsement is alleged to have been

signed by said J. Nelson Tappan and delivered by him to one James Armstrong the same has, without the consent or authority of said Tappan or Armstrong, been changed by said defendant, John W. Traer, while acting as trustee of the stockholders of said company, by inserting the name of "Alla D. Traer" as transferee of said stock.

6th. It appears from the testimony that the name of "Alla D. Traer" was so inserted by said John W. Traer, while the said paper and whatever it transferred stood in the name of James Armstrong, and there appears no authority from Armstrong or his alleged assignor, Tappan, to insert the said name of "Alla D. Traer."

7th. It does not appear from the pleadings of defendants, or from the evidence introduced or offered by the defendants, or otherwise, that the said Alla D. Traer, or any one for her, directed or requested John W. Traer to insert her name in writing on the back of said certificate, yet she produces the same.

8th. It appears from the testimony that said James Armstrong sent the said certificate to one Martin Howard, to "present the same to the proper party and collect dividends and remit," * * *
402 and he was "authorized to fill in" the name of James Armstrong, but no other or different authority was given by Armstrong to insert his own name or that of any other person, which the said Traer well knew.

9th. When an assignment in blank and delivery of a non-negotiable certificate of stock is alleged, vesting the title in one James Armstrong, it is not competent to prove the present ownership thereof in defendant, Alla D. Traer, by said certificate, after it has been entered and recognized by trustees of the stockholders as Armstrong's, without further assignment or endorsement by said Armstrong, but with the name of Alla D. Traer written in blank by a stranger without authority from said Armstrong.

10th. When, after the dissolution of a corporation and transfer of all its assets to trustees, a certificate of stock of a recorded stockholder is alleged to have been assigned in blank and delivered to one James Armstrong, such certificate so assigned is not competent evidence to prove a transfer of such recorded stockholder's distributive share of the assets of such corporation to the defendant, Alla D. Traer, whether her name, after the first assignment, was properly and rightfully written in the blank of the assignment or not.

11th. When it is alleged that an assignment in blank and delivery of certificate of stock in a dissolved corporation was made to one James Armstrong, containing words interlined therein as follows, viz., "together with all rights and dividends declared," and when it is admitted that said Armstrong, by his attorney, having possession of said certificate, thereafter collected declared dividends and interest to the amount of $11,913.75; and when it is admitted that
403 the transferee blank in the writing on the back of said certificate was not filled at the time said dividends were paid, but was, nearly two months thereafter, filled by John W. Traer, by writing in the name of Alla D. Traer, but no authority for so writing her name appears; and when the name of the said Armstrong does not appear on the face or back of said certificate as assignee or

subsequent assignor, and when no new assignment appears on said certificate or elsewhere—under such a state of pleadings, admissions, and facts the certificate itself, with the indorsement thereon aforesaid, is not competent evidence to prove that Alla D. Traer was the owner of said dividends when so paid as aforesaid, nor that she has since become the owner thereof.

12th. When defendants, in their pleadings, allege the assignment and delivery of a certificate of stock of a recorded stockholder in a dissolved corporation, to one James Armstrong, and admit that such alleged assignment was made after the assets of such corporation had been transferred to trustees; and when such alleged assignment was recognized by the said trustees as valid, and by them entered on their books as assigned to James Armstrong, and by them treated as Armstrong's property by paying to him declared dividends; and when the name of Alla D. Traer appears written nearly two months subsequently, filled into the transferee blank of the said alleged assignment from original assignor, but without authority shown; and when no subsequent assignment by said Armstrong is shown or alleged; and when it is not alleged that the said Alla D. Traer is the owner of the distributive share of the assets of said corporation which would have been due said recorded stockholder had not the alleged assignment to Armstrong been made; under such state of facts and pleadings the said certificate, with the indorsement
404 thereon offered as evidence to show Alla D. Traer's ownership of the said distributive share of the assets of said corporation, is incompetent, irrelevant, and outside of the issues.

13th. When a certificate of stock of a recorded stockholder in a corporation, duly organized under the laws of Iowa, is alleged to have been assigned and delivered to one James Armstrong, and he treated the certificate as his by collecting and receipting for dividends in his own name, and when it is not alleged that he has ever assigned the same, and when it is not shown that the assignment of stock has been entered and recorded on the books of the said corporation as provided by Sec. 1078 of the Code of Iowa, no valid transfer of said stock, or of said certificate, could be made until so entered, and the said certificate itself, with the name of Alla D. Traer subsequently written in the transferee blank of the writing on the back of said certificate without authority of said Armstrong shown, and without being shown to have been entered as provided in the Iowa Code, is not competent or legal evidence of Alla D. Traer's ownership of, 1st, the said stock, or, 2nd, of the distributive share of the assets which would have been due said recorded stockholder had the alleged assignment to Armstrong not been made, or, 3rd, of any dividend alleged to have been assigned with or on said certificate to said Armstrong.

14th. That the said certificate, with the writing on the back thereof, has been vitiated and destroyed as evidence by material alterations and mutilations of the same since leaving the hands of said Tappan.

1st. By the insertion of the name of Alla D. Traer in the trans-

feree blank in the writing on the back thereof, while the
405 title to the same and to what it purported to transfer stood in the name of James Armstrong, without his authority and without any assignment from him.

2nd. By inserting the figures "50" before the word "shares" after the said certificate and writing on the back thereof had been exhibited and copy attached to the separate answer of Alla D. Traer, and copy furnished plaintiff's attorneys.

The said certificate of stock and indorsement when read in evidence to the court was received subject to the objections of the plaintiff, not then argued because of the desire of the court to complete the introduction of testimony at that session. The plaintiff now urges the said objection with motion to exclude the said certificate and indorsement, or if the court shall deem it better practice the said several grounds for the motion are hereby presented and insisted upon as objections to the introduction of said certificate and indorsement as evidence, the right to make the same having been received and duly entered upon the records of the court.

In addition to the objections herein urged to the legality, competency, and relevancy of the said evidence, the plaintiff also insists upon the objection made before the commissioner to the introduction of the same when the deposition was taken, to which the court is referred.

GILMORE, CLARK & ST. JOHN,
Attorneys for Plaintiff.

406 On the 18th day of October, 1881, there was filed in the office of the clerk of the supreme court the appellee's "second abstract of record," the same being in the words and figures following, to wit:

Appellee's Second Abstract of Record.

"Supreme Court of Iowa."

"HENRY CLEWS, Appellee,
vs.
JOHN W. TRAER and ALLA D. TRAER *et al.*, Appellants. } In Equity.

To correct appellants' abstract of record, commencing at the third line of page 394, so as to read as follows:

'On the 7th day of February, 1880, this cause was submitted on pleadings and evidence, and by consent to be argued further in vacation, and decision of judge to be entered in vacation as
407 of the last day of this term, with right of either party to except and appeal;' which is duly certified by the clerk of said court, showing the same language was used in the entry of the judgment record, and of the judge's minutes covering the same transaction; page 55 abstract shows same entry correct.

FRANK G. CLARK,
R. H. GILMORE,
Attorneys for Pl'ff."

"STATE OF IOWA, *Linn County:*

I, Frank G. Clark, being duly sworn, on oath, say: That I am one of the attorneys of plaintiff in the case of Henry Clews *vs.* John W. Traer *et al.*, now pending in supreme court of Iowa; that I have had the general charge of said case from its inception; that defendants' abstract of record was prepared and submitted to me; that by some inadvertance I did not discover that the printed abstract
408 misrecited the record entry of February 7th, 1880, in said cause until the evening of the 14th day of October, A. D. 1881; that the amended abstract hereto appended, duly certified by the clerk of said court where said cause was pending, shows that both the record entry and the judge's minute covering the same transaction are couched in the same language, which certificates are on file in said cause, to which reference may be had.

FRANK G. CLARK."

"Subscribed by the above-named Frank G. Clark in my presence, and by him sworn to before me, this 15th day of October, A. D. 1881.

[SEAL.] OCE. B. JACKMAN,
Notary Public."

(Endorsed:) "Service of second abstract of record acknowledged this 17 day of October, A. D. 1881, and copy received. Hubbard, Clark & Dawley, att'ys for appellants."

409 On the 18th day of October, 1881, there was filed in the office of the clerk of said court a motion to affirm, which motion is in the words and figures following, to wit:

410 *Motion for Affirmance and Correction of Abstract.*

In the Supreme of Iowa.

HENRY CLEWS, Appellee,
vs.
JOHN W. TRAER and ALLA D. TRAER *et al.*, Appellants.

Frank G. Clark and R. H. Gilmore, attorneys for appellee.
Hubbard, Clark & Dawley, attorneys for appellant.

This action was commenced January 17, 1878, and, after being fully at issue, on February 3rd, 1880, the parties signed and filed a stipulation (see Abs. 54) that the hearing and argument of this cause be had before Hon. John McKean, judge of said circuit court, at Cedar Rapids (where attorneys and the defendants resided), until the hearing and argument are completed. Depositions were to be filed before the judge, and parties agreed that the judge act, rule, and decide, and that all he did should stand as the action of the court would stand. Exceptions were waived as to the hear-
411 ing, action, and decisions being by the judge, instead of the court. And it was further stipulated that final decree be entered, upon the hearing and argument before the judge, as though the same were made in open court.

This was a voluntary stipulation to submit the decisions of the matters in controversy to the judge with full powers of the court, instead of the court itself.

The parties voluntarily appeared before the said judge at Cedar Rapids, where the hearing was had, as appears by the record, until February 7th, 1880, when, for some reason which does not appear of record, it was resumed at the court-house at Marion, the county seat. It appears from the record that the cause was then submitted to the judge by consent of parties (Abs. 55), to be argued further in vacation, and with right of judge to make his decision in vacation. Afterwards, in vacation, on February 9th, 1880, the hearing of the cause was resumed before said judge at Cedar Rapids. The court had previously adjourned *sine die*. Afterwards, on the 2nd day of April, 1880, at Cedar Rapids, Iowa, the hearing of the cause was concluded before the said judge, and the case then and there "finally submitted" (Abs. 394), as appears by the decree.

The next following term of the circuit court convened at Marion, June 7th, 1880, and on July 2nd, 1880, the court entered the judgment and decree, as set forth on page 394 of the record.

There was never any hearing or trial before the court, as appears by the record, but wholly before Judge McKean, in accordance with the terms of the stipulation. And in the words of the stipulation, page 55, "final decree" was "entered by the court as in other cases, upon the hearing and argument provided for (in the stipulation) before the said judge, as though the same was made in open court."

At the time of the entry of decree and judgment both par-
412 ties were present and consenting thereto, and each party saved some exceptions to the matter and substance of the entry and the nature of the decisions, but there appear no exceptions to the right of the court to enter a judgment and decree on the findings or decision of the judge on the matters and things submitted to him. No exceptions were saved as to the manner or form or place of the trial, or to the official character of him before whom the hearing and argument was had. In short, no exceptions were saved, except as to the decision itself. Sixty days were given by the court to settle bill of exceptions. No bill of exceptions appears in the record. Subsequently the defendants brought this cause before this court by serving the notice required and filing a supersedias bond.

No errors have been assigned before this court by the morning of the first day devoted to causes from the district whence comes this appeal. Nor have any errors assigned been served upon the appellee or his attorneys at any time.

This record shows that the parties, by stipulation, submitted the cause to the arbitration of Hon. John McKean, to be heard and argued before him, and by him to be decided, if necessary, in vacation, and his decision to be entered as the decision of the court, as if the hearing and argument had been made in open court.

The record shows no trial of the case by the court. But it was stipulated that the decision of the judge should be spread upon the

records of the court and stand as the action of the court; and this was done.

The appellee's position is that this is not a case that can be tried *de novo* by this court, but only on error. No errors are assigned, and none can be considered, and hence the judgment below should be affirmed. This court will not consider errors not passed on below.

413 Schonver *vs.* Lynch, 11 Iowa, 459.

An appeal does not lie from a judgment on an award or from a judgment entered in court by consent of parties who are under the jurisdiction of the court. No trial of the cause on the merits can be had after the entry of such a judgment. The refusal of the trial court to set aside an award or recommit may be reviewed by the appellate court, but there can be no trial *de novo*.

Whitis *vs.* Culver, 25 Iowa, 30.

When parties have stipulated for a submission, as in this case to Judge McKean, and an entry of judgment is made without objection to the entry, in accordance with the terms of the submission, the parties are concluded thereby as upon a plea of confession.

Yates *vs.* Russell, 17 John., 461 on 466.
Green *vs.* Patchen, 13 Wend., 293.
Camp *vs.* Root, 18 John., 22.
See also Miller *vs.* Vaughn, 1 John., 315.
Stevenson *vs.* Beeker, 1 John., 492.

The case of Yates *vs.* Russell is a leading case on this point, and the cogent reasoning of Chancellor Kent is worthy the consideration of this court. He concludes: "I am therefore of the opinion that a party to that agreement must be held to be concluded by it, and that he cannot now allege that the reference and judgment are not warranted by law." See cases cited by the chancellor.

See also Johnson *vs.* Parmevly, 17 John., 129.
Dinsmore *vs.* Smith, 17 Wis., 20.

See the opinion of the court in Walker *vs.* Rogan, 1 Wis., on page 623, quoting largely from Doggett *vs.* Emerson, 1 Woodbury and Minnott, 1.

414 "Awards cannot be impeached or set aside unless for corruption, partiality, or gross misbehavior in the arbitrators or for some palpible mistake of law or fact."

Chancellor Kent in Herrick *vs.* Blair, 1 John. Ch., 101.
Kenniston *vs.* Kenny, 9 John., 212.
Tomlinson *vs.* Tomlinson, 3 Iowa, 575.
Ratliff *vs.* Mann, etc., 5 Iowa, 423.

The report is entitled to the same consideration as the verdict of a jury.

Dunn *vs.* Starkweather, 6 Iowa, 466.

The difference between an arbitration and a reference is fully discussed by this court in—

McKnight *vs.* McCullough, 21 Ia., 111 on 114.

II. The position may be taken that the plaintiffs agreed to an entry before the judge, reserving the right of either party to except and appeal.

The stipulation itself contained no such provision. The agreement that the Hon. John McKean should hear the cause and make the decision, and that thereon entry of judgment should be made, is absolute and unconditional. The hearing was conducted before him out of court, at Cedar Rapids, Iowa, from February 3rd to February 7th, when entry was made, page 55, "decision of the judge to be in vacation as of the last day of this term, with right of either party to except and appeal."

The submission was complete when it was signed and filed. Parties in entering upon the trial, pursuant to stipulation, thoroughly acquiesced in the terms of it, and expected to be governed by the rules of law in regard to such trials. It will
415 not be construed that the agreement quoted above was contrary to the stipulation and the legal intendment of it unless it so expressly appears. It only appears that parties reserved right to except, if there were any valid exceptions as in an ordinary case of arbitration, and upon those exceptions being sustained, or overruled, the right of appeal was reserved. The consent was entered that it might not be construed that the action of the court thereon should be final, but that it should be capable of review, as the dedisions of an arbitrator ordinarily are. In such a case this court does not try the action *de novo*, but only on errors. Whitis *vs.* Culver, 25 Iowa, 30. It is clear, therefore, that without a distinct and express stipulation that this court should have jurisdiction to try the cause *de novo*, it has no such jurisdiction under the statutes of this State.

But suppose this should be construed as an express agreement giving the court such jurisdiction, it would be of no avail, for parties cannot give an appellate court by agreement jurisdiction of a subject matter which without such agreement they would not possess. This is elementary, and no authorities on this point need be cited.

We have appended an amendment to the abstract correcting the phraseology of the entry of Feb. 7th, as printed on page 394, so as to conform to the facts. The same entry is correct on page 55. The error was not discovered till Oct. 14th, 1881.

Wherefore the appellee moves that the judgment and decree of the circuit court be affirmed as provided in Rule 24 of this court, and also that he have judgment against the sureties on the supersedias bond, a certified copy of which has been filed with the papers in this case.

FRANK G. CLARK,
R. H. GILMORE,
Attorneys for Appellee.

416 *Appellee's Second Abstract of Record.*

Supreme Court of Iowa.

HENRY CLEWS, Appellee,
vs.
JOHN W. TRAER and ALLA D. TRAER *et al.*, Appellants. } In Equity.

To correct appellants' abstract of record commencing at the third line of page 394, so as to read as follows:

"On the 7th day of February, 1880, this cause was submitted on pleadings and evidence and by consent to be argued further in vacation and decision of judge to be entered in vacation as of the last day of this term with right of either party to except and appeal;" which is duly certified by the clerk of said court, showing the same language was used in the entry of the judgment record and of the judge's minutes covering the same transaction. Page 55 abstract shows same entry correct.

FRANK G. CLARK,
R. H. GILMORE,
Attorneys for Pl'ff.

STATE OF IOWA, *Linn County:*

I, Frank G. Clark, being duly sworn on oath, say that I am one of the attorneys of plaintiff in the case of Henry Clews *vs.* John W. Traer *et al.*, now pending in supreme court of Iowa; that I have had the general charge of said case from its inception; that defend-
ants' abstract of record was prepared and submitted to me;
417 that by some inadvertence I did not discover that the printed abstract misrecited the record entry of February 7th, 1880, in said cause, until the evening of the 14th day of October, A. D. 1881. That the amended abstract hereto appended duly certified by the clerk of said court where said cause was pending shows that both the record entry and the judge's minute covering the same transaction are couched in the same language—which certificates are on file in said cause, to which reference may be had.

FRANK G. CLARK.

Subcribed by the above named Frank G. Clark in my presence, and by him sworn to before me, this 15th day of October, A. D. 1881.
[SEL.] OCE. B. JACKMAN,
Notary Public.

418 On the 18th day of October, 1881, there was filed in the office of said clerk a motion in words and figures following, to wit:

"*Motion to Strike Out Amendment to Abstract.*

In the Supreme Court of Iowa.

HENRY CLEWS, Appellee,

vs.

JOHN W. TRAER *et al.*, Appellants.

Appeal from Linn C. C.

The appellants moves to strike out amendment to abstract filed by appellee, Oct. 18, 1881, upon the following grounds:

1. Said amendment is filed without leave of the court long after the time allowed by the rules of this court, and is not a correct statement of the record upon which it is based.

2. It appears that the original abstract was submitted to appellee's counsel and approved by him before being printed.

419 3. The amendment is frivolous, the record clearly showing that the submission was to, and decree by the court, and the amendment merely shows the word 'judge' used as meaning the court before whom the submission took place.

4. Said amendment is not founded upon the record as certified up, and no application has been made to perfect the record or leave given to amend it.

HUBBARD, CLARK & DAWLEY,
For Appellants."

With said motion was a transcript of records, in the words and figures following, to wit:

"STATE OF IOWA, } ss:
Linn County, }

Be it remembered that at a time of the circuit court within and for the county and State aforesaid, begun and holden at the court-house in the city of Marion, on the 5th day of January, A.
420 D. 1880, Hon. John McKean, sole judge of the 8th judicial district of said State presiding, on the 19th day of said term, it being the 7th day of February, A. D. 1880, among other the following proceedings were had, done, and entered of record, to wit:

HENRY CLEWS *vs.* J. W. TRAER *et al.*

And now, to wit, Feb'y 7th, 1880, this cause comes on for hering, the plaintiff appearing by his attorneys, Gilmore, Clark & St. John, and the defendants appearing by their attorneys, Hubbard & Clark, and thereupon the evidence is adduced on part of both plaintiff and defendants, and arguments of counsel heard in part, and, by consent of parties, the cause is submitted on the pleadings and evidence, and to be argued further in vacation, and decision of judge to be entered in vacation, as of the last day of this term, with the rights of either party to except and appeal.

421 STATE OF IOWA, } ss:
Linn County, }

I, Geo. L. Stearns, clerk of the circuit court of the State of Iowa, in and for said county, do hereby certify that the foregoing is a true copy of the record-entry in the above as of the 7th day of February, 1880, as fully as the same remains of record in my office.

Witness my hand and the seal of said court hereto affixed, at my office, in Marion, in said county, on this 15th day of October, 1881.

[SEAL.] GEO. L. STEARNS, *Clerk.*"

"Circuit Court.

HENRY CLEWS *vs.* J. W. TRAER *et al.*

FEB'Y 7, 1880.

Submitted on pleadings & evidence, and, by consent, to be argued further in vacation, and decision of judge to be entered in vacation, as of last day of this term, with right of either party to except and appeal.

422 STATE OF IOWA, } ss:
Linn County, }

I, Geo. L. Stearns, clerk of the circuit court of the State of Iowa, in and for said county, do hereby certify that the foregoing is a true copy of the judge, John McKean's, minutes in the above case as fully as the same remains of record in my office.

Witness my hand and the seal of said court hereto affixed, at my office, in Marion, in said county, on this 15th day of October, 1881.

[SEAL.] GEO. L. STEARNS, *Clerk.*"

423 On the 19th day of April, 1881, there was filed in the office of the clerk of said supreme court a transcript of the record, in the words and figures following, to wit:

Be it remembered, that at a term of the district court within and for the county and State aforesaid, begun and holden at the court-house in the city of Marion, on the 2d day of April, A. D. 1878, Hon. John Shane, sole judge of the district court of Iowa, in and for the eighth judicial district of said State, presiding, on the 10th day of said term, it being the 12th day of April, A. D. 1878, among other the following proceedings were had, done, and entered of record, to wit:

HENRY CLEWS *vs.* JOHN W. TRAER *et al.*

By consent, as per stipulation on file, this cause is trans-
424 ferred to the circuit court of Linn county, and the next term thereof is to be the appearance term, and neither party is to change the forum to the United States courts, or to any other.

And afterwards, at the June term of the circuit court aforesaid, on the fifth day of said term, it being the 7th day of June, A. D.

1878, the Hon. John McKean, sole judge of said court, presiding, the following, among other, proceedings were had, done, and entered of record, to wit:

HENRY CLEWS *vs.* J. W. TRAER *et al.*

And now on this day this cause comes up for hearing on the demurrer to petition; the said demurrer is argued to the court by Clark & Lynch on the part of plaintiff, and submitted to the court.

Whereupon the defendants have 60 days to file argument
425 in support of demurrer, and plaintiff to have 30 days thereafter to answer thereto. Decision may be rendered on demurrer in vacation, and party against whom decision is made to have leave to plead further by amendment or answer within 30 days, as case may be; if desired may except and stand on pleadings, if desired, within same time. On pl'ff's motion, it is ordered that the cause be tried on the written evidence taken as depositions, for the purpose of a trial *de novo* in the Supreme Court in case of appeal.

And afterwards, to wit, at the January term, A. D. 1879, of said circuit court, the following, among other, proceedings were had, done, and entered of record, to wit:

HENRY CLEWS *vs.* J. W. TRAER *et al.*

426 And now on this day, to wit, January 30th, 1879, this cause comes up to be heard on the demurrer to petition. After argument of counsel, and the court being fully advised in the premises, it is considered by the court that said demurrer be overruled.

And afterwards, to wit, January 31st, 1879, the defendants in said cause have 30 days to file sworn answer on merits, and pl'ff has 30 days to plead thereto after notice that the same is filed. And cause continued.

And afterwards, at the June term, 1879, the following, among other, proceedings were had, done, and entered of record in the foregoing entitled cause, to wit:

HENRY CLEWS *vs.* J. W. TRAER *et al.*

And now on this day, to wit, June 16th, 1879, this cause comes on for hearing upon the motion of plaintiff for commitment of J. W. Traer for contempt, and the court having heard the argument
427 of the respective counsel, and being fully advised and satisfied in the premises, hereby overrules said motion; to which ruling the plaintiff excepts.

And afterwards, on the same day, C. J. Deacon, Esq., notary public, is hereby appointed commissioner to take the testimony of such witnesses as may be brought before him by consent, on subpœna by either party, on ten days' notice by either party, at his office in Cedar Rapids, Iowa. And cause continued.

And afterwards, at the said June term, 1879, the following, among other, proceedings were had, done, and entered of record, to wit:

HENRY CLEWS *vs.* J. W. TRAER *et al.*

And now on this day, to wit, June 20th, 1879, in the matter of the examination of defendant Traer, the motion of plaintiff for more specific answer to questions propounded to said defendant, comes on for hearing; and the court having heard the argument of the
428 respective counsel, and being fully advised and satisfied in the premises, it is considered by the court that said motion be sustained, and said defendant is ordered to make more specific answers within 30 days; to all of which rulings the defendant excepts.

And afterwards, at the January term, 1880, the following, among other, proceedings were had, done, and entered of record, to wit:

HENRY CLEWS *vs.* J. W. TRAER *et al.*

And now, to wit, February 3rd, 1880, in this cause the plaintiff has leave to file his second amendment to his petition, as of January 5th, 1880, and defendant has leave to answer same, and now the cause comes on for hearing upon the motion of defendants to suppress certain depositions of plaintiff, Messrs. Gilmore, Clark & St. John appearing for the plaintiff, and Messrs. Hubbard & Clark appearing for the defendants; and, after argument of the re-
429 spective counsel, and the court being fully advised in the premises, sustains said motion as to depositions of Austin Corbin, and as to Alla Traer, as claimed in divisions 3 & 7 thereof, and overrules said motion as to 1st, 2d, & 4th, to which the defendants except, and defendants' motion filed Feb'y 3rd, 1880, overruled as to the 1st div. thereof, and sustained as to 2d & 3d divisions. Defendants except as to Mrs. Traer.

And now defendant, Alla Traer, by her attorneys, waives the suppression of depositions against her, and same may be used on trial, but she is not to be charged with the same as costs in any event, and further trial of the cause to be had at Cedar Rapids, Iowa, as per stipulation of parties.

And afterwards, at the said January term, 1880, the following, among other, proceedings were had, done, and entered of record, to wit:

HENRY CLEWS *vs.* J. W. TRAER *et al.*

And now, to wit, February 7th, 1880, this cause comes on
430 for hearing, the plaintiff appearing by his attorneys, Gilmore, Clark & St. John, and the defendants appearing by their attorneys, Hubbard & Clark, and thereupon the evidence is adduced on part of both plaintiff and defendants, and the argument of counsel heard in part, and by consent of parties the cause is submitted on the pleadings and evidence, and to be argued further in vacation, and decision of judge to be entered in vacation as of the last day of this term, with the right of either party to except and appeal.

And afterwards, at the June term of said court, A. D. 1880, the following, among other, proceedings were had, done, and entered of record, to wit:

HENRY CLEWS
vs.
J. W. TRAER, J. F. ELY, THOS. GREENE, D. W. C. ROWLEY, and ALLA D. TRAER.

And now, to wit, July 2d, 1880, this cause comes on for judgment upon the findings of the court filed herein, which findings
431 are in words and figures following, to wit:

This cause was submitted at last term on pleadings and evidence, and by consent to be argued further in vacation, as shown by the record entry. And on Feb. 9th parties appeared before the undersigned, judge, &c., at Cedar Rapids, Gilmore, Clark & St. John for pl'ff, and Hubbard & Clark for the def'ts, and the plaintiff asked and obtained leave to file an amendment to petition, subject to the imposition of costs, to which the def'ts excepted, and filed an answer to same under protest.

And thereupon the plaintiff filed a motion to exclude certain evidence, which is overruled, and plaintiff excepted, said motion being in writing. And afterwards, and by Ap'l 2d, 1880, the case was, by consent as to the time and place of argument, fully and ably and exhaustively argued by the respective counsel for pl'ff and def't, and the case finally submitted after argument, and, not being able to reach a conclusion in vacation, the same is decided by
432 the court in term on this July 2d, 1880, and it is ordered that the bill of plaintiff be dismissed as against all the def'ts except J. W. Traer and Alla D. Traer, at plaintiff's cost, he excepts; but that the plaintiff shall have judgment against said J. W. Traer and Alla D. Traer, def'ts, in the sum of fifteen thousand dollars, and have execution therefor; both parties except, pl'ff and def't; and that plaint. shall pay the one-half the costs—he excepts; and the defendants one-half the costs—they except; and it is ordered that the clerk enter judgment accordingly, and def't Traer & pl'ff, ex., 60 days are allowed to settle bill of exceptions.

July 2d, 1880. JOHN McKEAN, *Judge, &c.*

Judgment is therefore entered against the defendants, J. W. Traer and Allen D. Traer, in favor of the plaintiff for the sum of fifteen thousand dollars, together with interest thereon at the rate of six per cent. per annum, and for the further sum of one hundred and seventy-six & $\frac{12}{100}$ dollars, being the one-half of the costs of this action. And judgment is hereby entered against the plain-
433 tiff for the sum of one hundred and seventy-six & $\frac{12}{100}$ dollars, the other half of the costs herein, and execution to issue accordingly.

And afterwards, on the 8th day of July, 1880, there was filed in the office of the clerk of the circuit court of Linn county, Iowa, a notice of appeal in words and figures following, to wit:

Notice of Appeal.

"In the Circuit Court of the State of Iowa, in and for Linn County.

HENRY CLEWS *vs.* JOHN W. TRAER, ALLA D. TRAER *et al.*

To the above-named plaintiff, or to Gilmore & Clark, his attorneys, and to George L. Stearns, Esq., clerk of said court:

You are hereby notified that the defendants in the above-entitled cause have appealed from the judgment of the circuit court of Linn county, Iowa, rendered in favor of the plaintiff and against defendants, at the June term thereof, on the 2d day of July, 1880,
434 to the supreme court of Iowa, and that said appeal will come on for hearing and trial in said court at the October term, 1880, thereof, to be held at Dubuque, commencing on the 18th day of October, 1880.

HUBBARD & CLARK,
Att'ys for Def'ts.

(Endorsed as follows:) Service of the within notice is hereby accepted and copy waived, this 8th day of July, 1880. Geo. L. Stearns, clerk circuit court. Due, legal, and timely service of the within notice of appeal is hereby accepted, and receipt of copy thereof acknowledged, this 8th day of July, 1880, at Cedar Rapids, Iowa. Gilmore & Clark, att'ys for pl'ff."

In Circuit Court of Linn County, Iowa.

"HENRY CLEWS *vs.* JOHN W. TRAER, ALLA D. TRAER, *et al.*

STATE OF IOWA, } *ss:*
Linn County, }

435 I, Geo. L. Stearns, clerk of the circuit court in and for the aforesaid county and State, do hereby certify that the foregoing is a true copy of all record entries and notice of appeal as fully as the same remain of record and on file in my office in the above-entitled cause, and that the testimony hereto attached, consisting of depositions and exhibits, is all the testimony offered and introduced on the trial of said cause, as appears from the certificate of the Hon. John McKean, the then judge of said court, hereto attached.

Witness my hand and the seal of said court hereto affixed, this 18th day of April, A. D. 1881.

[SEAL.] GEO. L. STEARNS, *Clerk.*"

436 The following proceedings were had in said supreme court, and the same are duly entered of record, to wit:

"Linn Circuit Court.

"THURSDAY, *October* 20*th*, 1881.

"HENRY CLEWS *vs.* J. W. TRAER *et al.*, Appl'ts.

"In this cause the court, being fully advised in the premises, overrule appellants' motion to strike appellee's amended abstract from

the files; also overrule his motion to dismiss, and also overrule appellee's motion to affirm."

"Linn Circuit Court.

"DECEMBER 15, 1881.

"HENRY CLEWS *vs.* JOHN W. TRAER and ALLA D. TRAER.

437 "In this cause the court, being fully advised in the premises, file their written opinion affirming the judgment of the circuit court.

"It is, therefore, considered by the court that the judgment of the court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly.

"It is further considered by the court that the appellants pay the costs of this appeal, taxed at $——, and that execution issue therefore."

Said opinion, filed December 15th, is in the words and figures following, to wit:

438 "HENRY CLEWS

vs.

JOHN W. TRAER, ALLA D. TRAER, Appellants.

Appeal from Linn circuit court.

Action in chancery. There was a decree granting relief to plaintiff, from which defendants appeal. The facts of the case, so far as they are involved in the questions decided by the court, appear in the opinion.

Hubbard, Clark & Dawley, for appellants. Clark & Lynch and R. H. Gilmore, for appellee.

BECK, J. 1. The papers upon which this case is submitted for decision are voluminous. The abstracts contain more than 400 pages, and the arguments of counsel are presented in more than 220 pages. The pleadings are prolix, and the evidence presented for our consideration is minute in disclosing facts and circumstances, and in some instances repetitious. To bring our opinion within reasonable bounds, and to consider in our discussion only the questions of law and facts upon which the decision of the case turns, have involved watchfulness and no little labor. We shall not attempt to discuss with particularity the testimony. It would require many pages to review it, even if briefly. We shall, as we are accustomed in such cases, content ourselves with stating our conclusions as to the controlling facts put in issue by the pleadings.

2. The original petition was filed January 17, 1878, and alleges that plaintiff was a stockholder, owning 50 shares of stock, of the par value of $1,000 each, in the Cedar Rapids & Northwestern Construction Company, which was engaged in building the Burlington, Cedar Rapids & Minnesota railroad; that plaintiff was adjudged a bankrupt February 19, 1874, and J. Nelson Tappan was appointed the trustee in bankruptcy of his estate; and that on the twenty-

third day of February, 1875, the Construction Company went into voluntary dissolution, and the defendant, John W. Traer, and others were made trustees to take possession of the assets, convert them into money, and pay the same to the stockholders after all debts
439 of the corporation were paid. It is shown that the value of the assets of the company amounted to a large sum, and that prior to the dissolution dividends were made and declared upon plaintiff's stock amounting to $15,000, all of which were fraudulently concealed from plaintiff, and from the trustee of his estate in bankruptcy, by the officers and managers of the Construction Company, and by defendant Traer, who had been from the first connected with the corporation and well knew all of its affairs. It is charged that he conspired with other officers of the company and with certain other parties to cheat and defraud the plaintiff and his estate in bankruptcy by falsely representing to plaintiff, and to Tappan, that the stock of the company in the name of Clews was of little value, not exceeding $600, and that it would be to the best interest of the estate to sell it for that sum. In pursuance of this conspiracy it is alleged that Traer, through certain agents and attorneys, induced Tappan, as trustee in bankruptcy, to transfer to Traer's attorney or agent the stock standing in Clews' name for the consideration of $1,200.

The facts and evidence supporting the allegations of the conspiracy and fraud of defendant Traer and his associates are particularly, and, in some instances, minutely, set out in the petition, and it is alleged that they received $15,000 upon the stock which they had purchased for $1,200 through their fraud and conspiracy. By the original petition John T. Ely, William Green, and D. W. C. Rowley, who were officers of the Construction Company, and the two first named appointed trustees, upon the dissolution of the corporation, were made defendants. It is shown that Tappan, the trustee in bankruptcy, transferred and assigned to plaintiff all claims held by him on account of the stock in the Construction Company. In October, 1879, Alla D. Traer, wife of defendant, John W. Traer, was made a defendant by an amended petition, which alleges that the stock was transferred to her by the agents or attorneys of her husband, who acted for him in carrying out his conspiracy to defraud the plaintiffs; that the transfer and purchase of the stock was made under the directions of Traer, and the money ($1,200) for the stock belonged to him; and that his wife was but an instrument used by him to accomplish his fraudulent purpose. On the ninth of February, 1880, the plaintiff filed an amendment to his petition, whereby Alla D. Traer was made a defendant, which repeats many of the allegations of his prior pleadings and states the facts and circumstances upon which his fraud is based, with some variations from his former allegations. Among other things he shows that Tappan, by the assignment of the stock, transferred all claim to and interest in the dividends in the hands of Traer, held by him as trustee of the bankrupt estate. Other allegations of the petition and amendments thereto need not be referred to.

The defendants in their answer put in issue all averments of fraud

found in the petition and amended petitions. Defendants, Traer and wife, deny all misrepresentation and fraud with which they are charged in the petitions, and in substance allege that the stock and dividends were acquired fairly and in good faith. The petitions as to all the defendants except Mr. and Mrs. Traer were dismissed. We think this decision of the court is correct, as we fail to find evidence upon which they can be held liable to plaintiffs upon the allegations of the petition. Indeed, we do not understand that plaintiff's counsel in their arguments complain of the dismissal of the petitions as to the defendants other than Traer and wife. A judgment for the sum of $15,000 was rendered against Mr. and Mrs. Traer.

3. We are all united in the conclusion, which is quite satisfactory to each of us, that the testimony amply supports the judgment. To our minds the following facts are clearly established by the evidence: (1.) Defendant Traer was a stockholder, officer, and trustee of the Construction Company, and had been, from the first, actively engaged in the management of its affairs. (2.) As trustee he was solely entrusted with the custody of the assets, books, and
440 papers of the corporation. (3.) He had full and complete knowledge of all matters pertaining to the assets and business of the company. (4.) He knew that plaintiff or his bankrupt estate was entitled to dividends amounting to at least $10,500, received by defendant upon entering upon the discharge of his duties as trustee. (5.) The assets of the company, much of them being in money, he held as a trustee for the stockholders, being so constituted by the act of dissolution of the corporation. (6.) He misrepresented the value of these assets to Clews and Tappan, and induced them to believe that the sum to which they were entitled did not greatly exceed $1,200 in value, the amount of the consideration of the assignment of the stock by Tappan. (7.) He employed attorneys and agents to negotiate for the purchase of the stock, who concealed from Tappan that the purchase was made for Traer or his wife. (8.) The purchase made by these agents was for Traer, and neither of them at any time was a good faith purchaser. (9.) Traer, in all of the transactions connected with the purchase of the stock, acted as the agent of his wife. (10.) Mrs. Traer knew that her husband was a trustee holding the assets for the stockholders of the company, and knew their value, and was guided in her purchase by his advice and direction. (11.) She knew that Tappan was ignorant of the value of the assets, and had knowledge of the devices used by her husband to secure the purchase of the stock and dividends.

We conclude that the property was purchased by means of the fraudulent concealments and misrepresentations of Traer, of which his wife had knowledge and in which she participated, and that both are liable for the value of the property purchased through their frauds, less the sum paid therefor.

4. We will proceed to notice the objections urged by defendants' counsel to the proceedings and decree of the court below not disposed of by our conclusions upon the facts. It is insisted that the amendment to plaintiff's petition last filed was made without au-

thority of law and must be eliminated in this court. The objection is based upon the following facts: The trial of the cause was commenced on the third day of February, 1880, and by agreement was continued in vacation. On the ninth day of February, in vacation, the plaintiff had leave to file the amendment in question. This, it is insisted, was without authority of law, for the reason that a judge in vacation has no authority to permit amendments. The cause was tried upon a stipulation in the following words: "It is stipulated that the hearing and argument of this cause be held before Hon. John McKean, judge of said court, at Cedar Rapids, in said county, commencing Tuesday, February 3d, at 9 o'clock a. m., and continuing from day to day until the hearing and argument are completed. Depositions may be filed by said judge, together with motions to suppress the same, or exceptions thereto, with the same effect as though filed in open court or by the clerk thereof; and the same action may be had thereon, and all other motions and interlocutory matters before said judge, and in open court, and the acts and doings, rulings, and decisions of said judge, on the hearing before him, shall be spread upon the records of the court, and shall stand in all respects as the action of the court; all the parties to said suit hereby expressly waiving all objections for irregularity, if any there be, because of such hearing, action, and decisions before the said judge, instead of the court. Final decree shall be entered by the court as in other cases, upon the hearing and argument herein provided for before said judge, as though the same was made in open court."

Under the terms of this stipulation the judge was authorized to pass upon all motions and interlocutory matters as in open court. All proceedings were to be the same as in a trial before the court. By this stipulation the trial was regarded as being before the court. We need not inquire what the powers of the judge respecting amendments would have been in the absence of the stipulation; with the stipulation they were the same as those conferred by law
441 upon the court. The stipulation affords a complete and ready answer to the objection under consideration. Nothing more need be said upon this point of the case.

5. It is insisted that this is an action to rescind the assignment of the stock and dividends, and that the action cannot be maintained for two reasons, namely: (1.) Tappan cannot retain all he has received, making no complaint, and maintaining his status as the contract left him, and yet, by an assignment of his claim against Traer, authorize liens to set aside the contract. (2.) Clews has taken no steps to rescind the assignment.

These objections are made under a misapprehension of the case. It is not an action to rescind the assignment of the stock and dividends; but it is an action of a stockholder of a corporation to recover dividends due him in the distribution of its assets, which are in the hands of a trustee. The assignment of the stock and dividends having been procured by the fraud of the trustee and assignee, is void. Being void, it cannot stand in the way of recovery by plaintiff. The trustee's act, in paying the assets to Mrs. Traer, being fraudulent, did not discharge him from liability to the stockholders;

but she, as a party to the fraud, and a recipient of the assets to which plaintiff is entitled, becomes liable therefor. Equity will pursue them in her hands. The contract of the assignment, because of fraud, is not binding, and the parties guilty of the frauds can gain no protection under it. These views are based upon the most familiar equitable principles. Tappan, having been defrauded by defendants in procuring the assignment of the stock and dividends, held a claim against them for the dividends and assets in their hands, to which he was entitled. They, as we have seen, will be regarded as holding the assets in trust for him. This claim held by Tappan is based upon the fraud of defendants. It arose upon the transfer of the stock and dividends, and is for a tort, fraud being regarded by the law as a tort. I Hill. Torts, 4; 2 Hill. Torts, 141. Claims for torts may be assigned under the laws of this State, and actions thereon may be prosecuted by the assignees. Weire *v.* City of Davenport, 11 Iowa, 49; Gray *v.* McCallister, 50 Iowa, 497. As this is not an action to rescind the assignment of the stock and dividends, but is an action to recover for a fraud—a tort—neither Tappan nor his assignee, Clews, were required to take any steps looking to rescision. The defendants cannot complain that Tappan and plaintiff hold the consideration paid for the assignment—$1,200—and yet seek to recover the value of the dividends, less $1,200. Defendants' liability is measured by the amount of money to which Tappan would have been entitled had defendants honestly paid to him or his assignee the dividends on the stock. The $1,200 go to defendants' credit as so much paid upon the dividends.

5. The defendants insist that the action is barred under section 5057 of the United States Revised Statutes, which limits the commencement of an action by an assignee in bankruptcy to two years after the cause of action accrued. But in actions brought to recover on account of fraud the bar of the statute commences to run when the fraud is discovered. Bailey *v.* Glover, 21 Wall. 342. The action was commenced against J. W. Traer within two years from the time of the assignment of the stock and dividend was made. But the action as to Mrs Traer was not commenced within that time. The last amended petition filed by plaintiff alleges that the connection of Mrs. Traer with the fraud complained of was not discovered until September 24, 1879, and before that date plaintiff had no knowledge thereof.

Counsel for defendants insist that the law requires plaintiff, in order to arrest the bar of the statute, to plead and show diligence used to discover the fraud and the circumstances of the discovery. We may, for the purpose of the case, admit the correctness of the rule relied upon by counsel. But no objection was raised in
442 the court below by demurrer, or in any other manner, to the amended petition on the ground that it did not sufficiently show diligence in the discovery of the fraud. The objection to the pleading on this ground cannot be first raised in this court.

The testimony shows, to our satisfaction, that Mrs. Traer's connection with the fraud was not discovered until it was disclosed by testimony taken in the case. As plaintiff was ignorant of the part

Mrs. Traer acted, and had no knowledge of her connection with the transaction, there was nothing to direct inquiry to her. He was not required to make diligent efforts to fasten fraud upon her, when he had no intimation that she had any connection with the business.

6. Counsel for defendants insist that when a new cause of action is set up by amendment to the petition, made after the statute of limitations had fully run, the action will be barred, though when commenced it was not barred. Applying this rule, which for the purposes of this case may be admitted, counsel insist that the amendment to the petition last filed presents a new cause of action, for the reason it alleges that the dividends due upon the stock were transferred by the assignment. The other petitions allege the transfer of the stock only, and before this amendment plaintiff insisted that the dividends due plaintiff when Traer was appointed trustee were not transferred by the assignment.

Counsel entertain the mistaken belief that plaintiff's cause of action rested upon the transfer of these dividends. The cause of action is based upon nothing of the kind. It is the act of defendants in fraudulently appropriating to their own use money in their hands, held by them as trustee for plaintiff. The conversion of the money to which plaintiff is entitled constitutes the cause of action. Whether the money was or was not transferred by an assignment is a matter of evidence to be considered in determining whether it was fraudulently transferred. The transfer by the assignment is pleaded and relied upon by defendants as a fact showing that there was no fraudulent appropriation of plaintiff's money. This transfer and assignment, therefore, instead of being the cause of action of plaintiff, is a matter of defence relied upon by defendant. The point demands no further notice.

7. The separate consideration of many points discussed by counsel on both sides of the case is rendered unnecessary, in view of the fact that they are disposed of by the conclusions we reach in other branches of the case, and many questions argued by counsel are not involved in the facts, as we find them from the evidence.

Plaintiff claims that he is entitled to a judgment for a sum greater than the secured in the court below. We think the amount of the decree of the circuit court is approximately correct and ought not to be changed. Affirmed."

443 On the 13th day of January, 1882, the writ of error allowed by the Honorable W. H. Seevers, chief justice of the supreme court of Iowa, was filed in the office of the clerk of said court, and the same is herewith returned in original form.

And on the 16th day of January, 1882, the citation served upon the defendant in error was filed in the office of the clerk of said supreme court, and the same is herewith returned in original form.

444 On the 13th day of January, 1882, there was filed in the

office of the clerk of said supreme court a bond, the same being in the words and figures following, to wit:

"Know all men by these presents, that we, John W. Traer and Alla D. Traer, as principals, and J. C. Traer and James C. Young, as sureties, are held and firmly bound unto Henry Clews in the penal sum of twenty thousand dollars ($20,000.00), lawful money of the United States, for the payment of which said sum, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals, this 7th day of January, 1882.

The condition of the above obligation is such that whereas, lately, at a regular term of the supreme court of Iowa, held at Des Moines, in said State, commencing on the first Monday of December,
445 A. D. 1881, in a suit pending in said court between the said Henry Clews, as complainant, and the above-bounden John W. Traer and Alla D. Traer, as defendants, a decree was rendered against the said John W. Traer and Alla D. Traer, and the said John W. Traer and Alla D. Traer are about to sue out a writ of error to remove said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit.

Now, therefore, if the said John W. Traer and Alla D. Traer, plaintiffs in error as aforesaid, shall prosecute their writ to effect, and if they fail to make good their plea in the Supreme Court of the United States, shall answer all damages and costs in said suit, and fully pay and discharge the same; then and in that event this obligation shall become void and of no effect; otherwise, to be and remain in full force and virtue.

J. W. TRAER. [SEAL.]
ALLA D. TRAER. [SEAL.]
J. C. TRAER. [SEAL.]
JAMES C. YOUNG. [SEAL.]"

446 "STATE OF IOWA, } ss:
Benton County, }

I, J. C. Traer, being duly sworn, depose and say: That I am one of the sureties upon the foregoing bond; that I am a citizen and resident of the town of Vinton, in the county of Benton and State of Iowa; that I am worth the sum of fifteen thousand dollars over and above my indebtedness and liabilities, and that I have property liable to execution in the State of Iowa equal to fifteen thousand dollars.

J. C. TRAER.

Subscribed in my presence by the said J. C. Traer, and by him sworn to before me, this 7th day of January, 1882.

[SEAL.] GLENN W. TRAER,
Notary Public in and for Benton County, Iowa."

"STATE OF IOWA, } ss:
Linn County, }

447 I, James C. Young, being duly sworn, depose and say: That I am one of the sureties upon the foregoing bond; that I am

a citizen and resident of the city of Cedar Rapids, in the county of Linn, and State of Iowa; that I am worth the sum of five thousand dollars over and above my indebtedness and liabilities, and have property liable to execution in the State of Iowa equal to five thousand dollars.

JAMES C. YOUNG.

Subscribed by the said James C. Young in my presence, and by him sworn to before me this 7th day of January, 1882.

[SEAL.] B. F. HEINS,
Notary Public, in and for Linn County, Iowa."

"STATE OF IOWA, *Benton County:*

I, A. Thompson, clerk of the district court in and for the
448 county & State aforesaid, hereby certify that in my judgment the above bond is perfectly good, and if presented to me for approval I should approve same.

Dated Jan'y 7, 1882. A. THOMPSON,
Clerk D. C., Benton Co., Iowa."

Endorsed: "This bond accepted and approved by me this the 12th day of January, A. D. 1882. W. H. Seevers, chief justice of the supreme court of Iowa."

449 THE STATE OF IOWA, *ss:*

I, E. J. Holmes, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of appellants' and appellee's abstracts, upon which said cause was tried in said supreme court, together with motions, supreme court records and opinion, copy of bond, and transcript of record from the Linn Co. circuit court, as full, true, and complete as the same are of record and on file in my office.

And I further certify that the writ of error and citation are returned herewith in original form, and that this transcript is returned in obedience to said writ.

In testimony whereof, witness E. J. Holmes, clerk of said supreme court, with the seal thereof hereto affixed. Done at Des Moines, Iowa, this 4th day of September, 1882.

[SEAL.] E. J. HOLMES,
Clerk of the Supreme Court.

450 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court of Iowa before you, being the highest court of law or equity of said State in which a decision could be had in the said suit, between Henry Clews, complainant, and John W. Traer and Alla D. Traer, defendants, wherein a title and right was claimed by the said John W. Traer

and Alla D. Traer under a commission held and authority exercised under the United States, and the decision was against the title and right specially set up or claimed under said commission held and authority exercised under the United States, and wherein also a right, privilege, and immunity was claimed by the said John W. Traer and Alla D. Traer under a statute of the United States, and the decision was against such right, privilege, and immunity specially set up or claimed under such statute, a manifest error hath happened, to the great damage of the said John W. Traer and Alla D. Traer, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so
451 that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 12th day of January, A. D. 1882.

[SEAL.] EDWARD R. MASON,
Clerk United States Circuit Court,
Dist. of Iowa, Central Division.

Allowed.
W. H. SEEVERS,
Chief Justice of the Supreme Court of Iowa.

452 [Endorsed:] Henry Clews *vs.* John W. Traer and Alla D. Traer. Filed Jan. 13, '82. E. J. Holmes, clerk sup. court. Writ of error.

453 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Henry Clews:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein John W. Traer and Alla D. Traer are plaintiffs in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Seevers, chief justice of the supreme court of the State of Iowa, this 12th day of January, 1882.

W. H. SEEVERS,
Chief Justice of the Supreme Court of Iowa.

454 Service of the within citation acknowledged, and copy of the same, together with copy of the writ of error therein referred to, received, this 14th day of January, A. D. 1882, at Cedar Rapids, in the county of Linn and district of Iowa.

FRANK G. CLARK,
Attorney for Def't in Error.

Filed Jan. 16, 1882. E. J. Holmes, clerk sup. court.

Endorsed on cover: Iowa supreme court. No. 308. John W. Traer and Alla D. Traer, plaintiffs in error, *vs.* Henry Clews. Filed 6th October, 1882.

ABSTRACT OF FACTS.

Henry Clews, the plaintiff below, brought this suit in the state courts of Iowa for an accounting touching fifty shares of capital stock in the Cedar Rapids Northwestern Construction Company, an Iowa corporation, and dividends thereon amounting to $10,500, and interest. The stock, $50,000 in amount, was originally owned by Clews, who was one of the organizers of the construction company; and the dividends were declared, $10,000 December 3, 1873, $500 January 31, 1874, (Record 255, exs. 53 and 54), while Clews still owned the stock.

In November, 1874 (Record 1) Clews was put into bankruptcy, and his stock, with the unpaid dividends thereon, passed to J. Nelson Tappan, trustee of his estate in bankruptcy.

March 4, 1876, the said trustee sold said stock and dividends to Mrs. Alla D. Traer, plaintiff in error, who was defendant below, and delivered to her agent the stock certificate, with an assignment on the back thereof in blank, which was afterwards filled up as follows:

"For value received, *I* do hereby sell, assign and transfer to *Alla D. Traer*, *fifty* shares of the within mentioned capital stock, *together with all rights and dividends declared, J. N. T.*, and do hereby constitute and appoint ———— attorney to transfer said stock on the books of the company.

Henry Clews,
Per J. Nelson Tappan,
Trustee.

Dated *March 4, 1876.*
In presence of *R. A. Southwick.*"

[The words and figures in italics are written, the rest printed.]

(Record 268.)

The amount received by Tappan for this assignment was $1,200. It cost Mrs. Traer $3,000, including, expenses, commissions, etc. (Record 219.)

Prior to the time that Tappan made this sale and assignment of the stock and dividends, and in February, 1875, the Construction Company had dissolved, and had placed its assets and affairs in the hands of trustees for the purpose of winding up its business. John W. Traer, plaintiff in error and husband of Alla D. Traer, was one of the trustees thus elected. (Record 235, exhibit H.) Dr. John F. Ely was the other. (Record 240, exhibit No. 4.)

To these trustees of the Construction company the assignment of the Clews stock and dividends was presented, was recognized by them as valid, and payment of the dividends with interest, amounting to $11,913.75, was made March 20, 1876. (Record 232, exhibit C, and 235, exhibit G.)

About eighteen months after this, Tappan executed to Henry Clews the following instrument:

"In consideration of the sum of $1, to me paid by Henry Clews, the receipt whereof is hereby acknowledged, and for other good and

valuable considerations, I hereby sell, assign, transfer and set over unto the said Henry Clews, any and all claims and demands of every name, nature and description that I now have or be entitled to on account of the fifty shares of the capital stock in the Cedar Rapids and Northwestern Construction Company, which were subscribed for by said Henry Clews.

Dated New York, Dec. 6, 1877.

J. NELSON TAPPAN,

Trustee in Bankruptcy of Henry Clews & Co. and of Henry Clews individually."

Duly acknowledged. (Record 8.)

It is not shown that Clews had received his discharge in bankruptcy at the time of this transaction with his trustee. There is no allegation in the pleadings that he ever received such discharge. In his deposition, taken on *dedimus*, he was asked the date of his discharge. (Record 213). Before the *dedimus* was issued, written objections were filed to this interrogatory, as calling for testimony "immaterial and incompetent, and because the record or duly authenticated copy is the best evidence." (Record 215, par. 12). Clews' answer to this question, giving date of discharge as December 24, 1875, (Record 213), cannot be considered any evidence of such discharge. It could only be used, if at all, to identify the discharge when produced. But no discharge or record or certified copy was ever produced. There is, therefore, neither pleading nor proof showing Clews' competency to contract with his own trustee in bankruptcy.

However, by virtue of the above instrument from his trustee, Tappan, Clews commenced this suit in his own name, for his own use.

He proceeded by bill in equity, his suit being commenced January 17, 1878, against plaintiff in error, John W. Traer, and others who had been officers or trustees of the Construction Company. Mrs. Traer, who had purchased the stock and dividends, was not made a party until long afterwards.

The bill charged a combination and conspiracy among the original defendants to conceal from Clews and his trustee, Tappan, the existence of the dividends, and that these dividends had been fraudulently converted by defendants in pursuance of their conspiracy, without any color of right or authority. It further charged that by frudulent combination and practices they had procured from Tappan, trustee, an assignment of the *stock only* to John W. Traer. It prayed that this assignment might be set aside for fraud, and for an accounting as to the dividends and the *pro rata* share of the assets of the corporation pertaining to said stock.

To this bill defendants interposed a general demurrer, which was overruled. (Record 12–13).

Thereupon the original defendants answered, denying all fraud and conspiracy, and denying any interest or claim in the stock, the assets pertaining thereto, or the dividends alleged to have been concealed and converted. (Record 17).

Nearly two years after the suit was commenced, namely, October 28, 1879, Mrs. Alla D. Traer, who had purchased the stock and dividends, was made a party defendant. (Record 22). This was

done by amendment alleging against her everything charged in the original bill; and then charging a conspiracy between herself and her husband, John W. Traer, by which they had defrauded Tappan out of the stock; and fraudulently converted the dividends to their own use. The relief prayed was the same as claimed by the original bill. (Record 23–26).

Mrs. Traer answered denying all allegations of fraud and conspiracy and setting out a copy of her assignment of the stock and dividends. (Record 28).

She further pleaded that Tappan had not disaffirmed her assignment, but had affirmed and ratified it by keeping the money she had paid him. That Clews had not offered to place her in *statu quo;* that the pretended assignment to Clews conveyed no interest in the stock or dividends, and was without substantial consideration, to enable Clews to stir up litigation. (Record 27). She further pleaded the two years statute of limitations contained in the bankrupt act. (Record 27).

The plaintiff, Clews, replied to this answer of Mrs. Traer, alleging that so much of her assignment as related to the accrued dividends was a forgery. (Record 28).

February 3, 1880, about four years after Mrs. Traer became the owner of the stock and dividends, and more than two years after the commencement of the suit, Clews filed a further amendment to his bill, alleging that the cause of action against Mrs. Traer was "studiously concealed," and was not discovered by Clews or Tappan until the same was disclosed by the testimony of John W. Traer, September 24, 1879. (Record 34). By this same amendment, Clews offered that there might be deducted from the amount found due him the sum paid by Mrs. Traer for her assignment *of the fity shares of stock.* It was still denied that she held any assignment for the accrued dividends.

Upon these pleadings final hearing was had, the case argued in part, and submitted to the court to be further argued and decided in vacation. (Record 34–35).

When the suit came on for further argument before the judge in vacation, Clews, against the protest and exception of defendants, obtained leave to further amend his bill. (Record 35, 292).

This final amendment was filed February 9, 1880. Everything in the original bill and amendments was charged anew. It was then admitted for the first time that the accrued dividends were assigned to Mrs. Traer, as well as the stock. (Record 37). The same relief was prayed as before, including setting aside the assignment for fraud; and an offer was made that the amount paid by Mrs. Traer for her assignment might be deducted from whatever was found to be due Clews.

The defendants answered under protest, insisting that the amendment could not be allowed in vacation. (Record 39). They admitted that the dividends as well as stock were assigned to Mrs. Traer, but denied all other material matters in the amendment. They pleaded the two years statute of limitations in the bankrupt act, and

insisted that the bill and amendments made a case so vague, indefinite, contradictory and in the alternative, that no relief could be grounded thereon.

The trial court did not set aside Mrs. Traer's assignment for fraud or other cause; did not order that she should be allowed what she had paid therefor; did not order an accounting touching the dividends or *pro rata* share of the corporation assets belonging to the fifty shares of stock; but rendered a money judgment for the lump sum of $15,000 against John W. Traer and Alla D. Traer, plaintiffs in error. The bill was dismissed as to the other defendants, and the suit ended as to them. The Traers appealed to the supreme court of Iowa, where the decree below was affirmed.

The following sections of the code of Iowa define the rights of Mrs. Traer, a married woman, as to making contracts, holding property suing and being sued, etc.:

"Section 2202. A married woman may own in her own right, real and personal property acquired by descent, gift or purchase, and manage, sell, convey and devise the same by will, to the same extent and in the same manner that the husband can property belonging to him."

"Section 2205. For all civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor, except in cases where he would be jointly responsible with her if the marriage did not exist."

"Section 2211. A wife may receive the wages of her personal labor and maintain an action therefor in her own name, and hold the same in her own right; and she may prosecute and defend all actions at law or in equity for the preservation and protection of her rights and property, as if unmarried."

"Section 2213. Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her to the same extent, and in the same manner, as if she were unmarried."

"Section 2562. A married woman may in all cases sue and be sued without joining her husband with her, to the same extent as if she were unmarried, and an attachment or judgment in such action shall be enforced by or against her as if she were a single woman."

ASSIGNMENT OF ERRORS.

The plaintiffs in error say there is manifest error upon the face of the record in this:

1. The court below erred in overruling their respective pleas of the statute of limitations contained in the bankrupt act.

2. The said court erred in holding that the instrument from Tappan, trustee, under which Clews, defendant in error claims, assigned to said defendant in error any rights upon which he can maintain this suit.

3. The said court erred in holding that the assignment of stock and dividends by Tappan, trustee, to plaintiff in error, Alla D. Traer, was absolutely void.

4. The said court erred in holding that this suit could be maintained without a tender to plaintiff in error, Alla D. Traer, of the amount she had paid for the stock and dividends.

5. The said court erred in holding that the instrument under which defendant in error claims, conferred any right or title upon him, or enabled him to call in question the title and rights conferred upon plaintiff in error, Alla D. Traer, by her assignment from Tappan, trustee.

Wherefore plaintiffs in error pray judgment.

N. M. HUBBARD,
CHAS. A. CLARK,
For Plaintiffs in Error.

BRIEF.

I.

JURISDICTION OF THIS COURT.

The jurisdiction of this court arises under Sec. 709 of the U. S. Rev. Stats., and is invoked upon two grounds.

1. To review the action of the court below in deciding against defendants' plea of the two years statute of limitations contained in the bankrupt act, Sec. 5057 U. S. Rev. Stats. This section applies to suits by and against trustees, as well as assignees in bankruptcy. Sec. 5103 U. S. Rev. Stats. No question can arise as to the jurisdiction under this head.

2. The plaintiffs in error specially set up and claimed title to the stock and dividends under a written assignment from Tappan, trustee in bankruptcy, who *held his commission, and exercised his authority under the United States*, and the decision below was "*against the title thus specially pleaded and claimed.*"

This action of the state court is subject to review in this court under the statute cited, which confers jurisdiction to review the action of the state courts, "Where any title, right * * * * is claimed under any commission held, or authority exercised under the United States, and the decision is against the title, right, * * * * specially set up or claimed by either party under such * * commission or authority."

The decisions fully sustain the jurisdiction of this court upon the last mentioned ground.

New Orleans R'y Co. vs. Delamore, 114 U. S., 501, was a case where the plaintiff claimed in the state courts of Louisiana, title to property under a sale thereof by a bankrupt court, which acted as Tappan, trustee in bankruptcy, acted in this case, under the laws of the United States. The decision of the state court was against the title derived under the sale by the bankrupt court. This court decided that it had jurisdiction to review the decision of the state court, saying, opinion by Mr. Justice Woods :

"The case falls precisely into the class of suits described by the statute in which a writ of error lies to the highest court of a State."

Precisely such a case was Factors &c. Ins. Co. v. Murphy, 111 U. S., 741, where it was said, opinion by Mr. Justice Miller:

"Counsel for defendant in error deny the jurisdiction of this court and move to dismiss the writ. But it is apparent that the only controversy in the case relates to the effect to be given to the sale under the order of the District Court of the United States to sell the mortgaged property, free from incumbrance. Both parties assert rights under this order and sale * * * Both parties therefore, rely upon rights under *federal authority*, and as the right of the plaintiff in error was denied by the court the writ of error lies."

So in the case at bar, both parties claim under a purchase from Tappan, trustee in bankruptcy, who acted solely under the same identical *federal authority*, as did the bankrupt courts in the two cases above cited. "And as the right of the plaintiff in error was denied by the court below, the writ of error lies."

Ray v. Norseworthy, 23 Wall, 128, was a case of writ of error to the Supreme Court of La. to review its action touching a sale of property by a bankrupt couct, and this court exercised jurisdiction, which was not questioned.

See also Crapo v. Kelly, 16 Wall, 611.
Green v. Van Buskirk, 5 Wall, 314.

A United States Marshal, under a warrant of provisional seizure, seized goods as belonging to the estate of the bankrupts mentioned in the warrant, and was sued in the state courts, where judgment was rendered against him for the value of the goods, which judgment was affirmed by the court of last resort of the State, and this court held that it had jurisdiction to review, opinion by Mr. Justice Miller, who said:

"The defendant (Marshal) asserted a right to the goods under the laws of the United States, on the ground that the pretended purchase of the plaintiffs was a fraud on the bankrupt law and passed no title; that the ownership was, by virtue of the bankruptcy proceedings, in the assignee and that the plaintiffs were not entitled to recover. The right so claimed was decided adversely to the defendant. The decision was affirmed in the court of last resort, and it depends upon the authority conferred on him by the writ. The case is therefore a proper one for a writ of error from this court."

Sharp v. Doyle, 102 U. S., 688.

Under these authorities, it does not admit of doubt that this case is subject to review in this court, upon the ground that the decision of the state court of last resort was against the title under federal law and authority specially set up and claimed by plaintiffs in error.

II.

THE STATUTE OF LIMITATIONS.

The stock and accrued dividends were assigned to Mrs. Traer March 4th, 1876. The dividends were paid over to her March 20th,

1876 (Record 232-5. Ex. C. and G.) The suit as to her was not commenced until Oct. 28, 1879, three and one-half years after the right of action accrued. In the absence of fraud the action was barred as to Tappan, trustee, in two years from the time it accrued. It was barred in the same time as to Clews, who stands in the shoes of the trustee.

In a suit in this court, where the plaintiff holding an asignment from an assignee in bankruptcy, sought to recover property claimed to belong to bankrupt's estate in the hands of an alleged fraudulent grantee of the bankrupt, it was held that the right of action of the assignee in bankruptcy being barred in two years, it was barred in like manner as to the plaintiff claiming under him. And it was said as to the bar of the statute, opinion by Mr. Justice Clifford:

"Beyond all doubt it applies to all judicial contests between the assignee and other persons touching the property or right of property of the bankrupt, transferable to or vested in the assignee, where the interests are adverse aud have so existed for more than two years from the time when the cause of action accrued, for against the assignee."

Citing Bailey v. Sanford, 21 Wall., 346.

And the conclusion of the court was:

"Nothing can be plainer in legal decision than the proposition that the complainant did not acquire, by the conveyance made to him under the sale, any greater rights than those possessed by the grantor."

Gifford v. Helms, 98 U. S., 248.

So the bar was complete as to Mrs. Traer when the suit against her was commenced, To avoid this Clews alleged fraudulent concealment as to Mrs. Traer, by an amendment to his petition, (Record 34) and reiterated the charge in a further amendment. (Record 38). An answer was filed denying the charge. (Record 40).

Where fraud and concealment are relied upon to take a case out of the Statute of limitations, this court lays down the rule as follows:

"The plaintiff is held to *stringent rules of pleading and evidence*, and especially must there be distinct averments as to the time when the fraud, mistake, concealment or misrepresentation was discovered, and *what the discovery is*, so that the court may clearly see whether by ordinary diligence the discovery might not have been made before."

"A general allegation of ignorance at one time and knowledge at another are of no effect. It the plaintiff made any particular discovery it should be stated, when it was made, *what it was, how it was made, and why it was not made sooner.*"

"Whatever is enough to excite attention, and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact he shall be deemed conversant of it.

"A party seeking to avoid the bar of the statute on account of fraud must aver and show *that he used due diligence to detect it* and if he had the means of *discovery* in his power, he will be held to have known it."

"There must be reasonable diligence, and the means of knowledge are the same thing in effect as knowledge itself."

"The circumstances of the discovery must be *fully stated and proved, and the delay which has occurred must be shown to be consistent with the requisite diligence.*"

Wood vs. Carpenter, 11 Otto, 135.

Now, the first attempt to avoid the bar of the statute merely sets forth that "Mrs. Traer's connection with the alleged fraudulent transaction was studiously concealed from plaintiff and his assignor," and was not discovered until Sept. 24, 1879, on the examination of John W. Traer as a witness. (Record 34.)

The second attempt consists of an allegation "that the connection of Alla D. Traer with said fraudulent transaction was first discovered by plaintiff's attorney on or about Sept. 24, 1879, and that plaintiff had no previous knowledge thereof." (Record 38).

And the *only proof* to sustain these allegations is the following stipulation:

"It is further stipulated, subject to the defendants' objection, defendants insisting that it is immaterial, incompetent and foreign to the issues, that Clark & Lynch, sole attorneys for J. Nelson Tappan and Henry Clews, up to that time had no knowledge or information of the claim of Alla D. Traer to the Henry Clews stock and dividends therein described in the pleadings, nor of her connection therewith, until the taking of the deposition of John W. Traer, about Sept. 25, 1879, and that said Clark & Lynch, after May 1, 1877, conducted all the investigations touching such stock and dividends as such attorneys." (Record 230.)

Here, then, is neither pleading nor proof to avoid the bar of the statute as to Mrs. Traer, under the foregoing decision of Wood vs. Carpenter.

It is not shown how the pretended concealment was effected, nor by whom. It does not appear that there was any diligence or inquiry, nor "what was discovered." This court says in the case above cited that "concealment by mere silence is not enough. There must be some trick or contrivance intended to exclude suspicion and prevent inquiry." (11 Otto, 143.) But nothing of this kind is pleaded. There is simply "a general allegation of ignorance at one time, and knowledge at anotber," which this court holds to be of no effect. Like the pleading in Wood vs. Carpenter, "it contains some vigorous declamation, but is wanting in the averment of facts which are indispensible to give it sufficiency in pleading."

These insufficient allegations of the pleadings are not sustained by the evidence as above pointed out, and the bar of the statute as to Mrs. Traer must be sustained.

2. The cause of action set out against John W. Traer in the original bill, *as to the dividends*, was an alleged conspiracy by which the existence of the dividends was concealed from Tappan and Clews, and the same were appropriated and converted without any color of right or authority. Clews always stoutly denied that there was any assignment whatever of the *dividends* until his last amendment was filed February 9, 1880. (Record 35.)

By this amendment, it was admitted that Tappan sold and assigned the dividends as well as the stock (Record 37), but it was charged that the assignment was procured through a conspiracy between Mr. and Mrs. Traer, plaintiffs in error, and fraud practiced by them upon Tappan in pursuance thereof, and it was sought to have the assignment cancelled by reason of such fraud, and an accounting as to the dividends after setting the assignment aside.

This was clearly a new cause of action against Traer, which accrued in March, 1876, when the assignment was made, and the dividends paid over.

And the statute of limitations continued to run until the new cause of action was pleaded.

Holmes v. Trout, 7 Pet., 213.
Gorman v. County Judge, 27 Mich., 139.
The People v. Co. Judge, 35 Mich., 229.
R. R. Co. v. Cobb & Co., 64 Ills., 140.
Commissioners, etc. v. Andrews, 18 Ohio St., 49.
Skowhegan Bank v. Cutler, 49 Me., 315.
Woodward v. Ware, 37 Me., 564.
Woodbridge v. Hathaway, 45 Texas, 380.
Longford v. Scott, 51 Ala., 557.
Marble v. Hinds, 67 Me., 303.
Hawthorne v. State, 57 Ind., 286.
Selma R. R. Co. v. Lacy, 49 Ga., 106.

Nearly four years had elapsed when the new cause of action as to the dividends was set up, and this was an abandonment of the original charge of a naked conversion. Traer joined in the plea of the two years statute of limitations as to this cause of action. (Record 41, Par. 22). Clews did not attempt to remove the bar of the statute as to him by charging a discovery of the alleged fraud within the two years. The only attempt to do this was as to Mrs. Traer. (Record 38, Par. 17). Hence, so far as Traer is concerned the bar of statute is complete as to the dividends and he is discharged thereby.

An assignment of the stock would not carry the accrued dividends, unless they were specially included therein.

Jermain v. R. R. Co., 91 N. Y., 483.
Note to S. C. 1 Am. & Eng. Corp. Cases, 119.
Bright v. Lord, 51 Ind., 272.

III.

RIGHT TO OVERSET LEGAL INSTRUMENT NOT ASSIGNABLE.

It is admitted by the pleadings that Tappan sold and assigned the stock and dividends, and delivered the certificate of stock, with his assignment thereof, and of the accrued dividends endorsed on the back. Thus he parted with the legal title of both.

He did not attempt thereafter to convey the stock or dividends to Clews. His assignment to Clews is of "any and all *claims* and *demands* of every name, nature and description, that I now have or be entitled to *on account of* the fifty shares of capital stock." (Record 8).

This was not a sale of the stock itself, nor of the dividends already sold and assigned in writing. Nor is anything of the kind

claimed for Clews in the pleadings. What he seeks to do by his bill is to set aside the assignment under which Mrs. Traer claims, for fraud in its procurement. (Record 8, 37, 39). Does the instrument under which he claims give him any such right?

"Where an equitable interest has been assigned in order to give the assignee a *locus standi judicio* in a court of equity, the party assigning such rights, must have some substantial possession, some capability of personal enjoyment, *and not a mere naked right to overset a legal instrument, to maintain a suit.*"

Brace v. Reid, 3. G. Greene, 423.

This decision has never been denied or overruled by the supreme court of Iowa.

Sustaining the same view in New York, are

French v. Shotwell, 5 Johns Ch., 566.
Same case affirmed, 20 Johns, 688.
Shufelt v. Shufelt, 9 Paige Ch., 144-6.

The English cases are the same way.

In De Hogton v. Money, 2 L. R. Ch. App., 169, it was said:

"The right to complain of fraud is not a marketable commodity."

White v. Hill, Eng. L. R., 4 Eq. Cas. 265.
Prosser v. Edmonds, 1 Y. & C., 481.

This is the law of Michigan.

Brush v. Swett, 38 Mich., 578.
Dickinson v. Beaver, 44 Mich., 631.

In the case last cited, it was said:

"The present complainant—according to his own proofs—has merely purchased claims for the purpose of this litigation or some litigation. *He was never defrauded. It would be against every rule of equity to allow a party to buy up stale claims and then seek to establish fraud committed against his assignors.*"

The law is the same in Wisconsin.

Crocker vs. Bellanger, 6 Wis., 642.
N. & M. Ry. Co. vs. Ry. Co., 20 Wis,, 392.

And the rule has been upheld in this court upon a full review of the authorities.

Graham vs. Ry. Co., 102 U. S., 148.

In this last case the vigorous reasoning of Lord Abinger in Prosser vs. Edmonds, is cited with marked approval. 102 U. S., 155, and it is held that the authority of that case is unshaken.

In the decision of this case below, none of these authorities were doubted or denied by the Supreme Court of Iowa; but that court simply held that this "is not an action to rescind the assignment of the stock and dividends" (to Mrs. Traer); "but is an action of *a stockholder* of a corporation to recover dividends due him in the distribution of its assets, which are in the hands of a trustee." (Record, 297.)

In other words, Clews was declared by the court below to be a *stockholder* in the corporation; whereas, we have seen from the very terms of the instrument under which he claims that he is nothing of the sort, and the only right attempted to be assigned him by Tappan was, if anything, "a mere naked right to overset a legal

instrument," for fraud alleged to have been practiced on Tappan. There is no holding that he could take such right by assignment; but there is the gravest possible error of fact in holding that Clews held the legal title to the stock, which had never been tranferred to him, in any manner or form, and which had been vested in Mrs. Traer long before the assignment to Clews of "*all claims and demands on account of the stock.*"

That the assignment of the stock and dividends in blank passed title to Mrs. Traer does not admit of question.

Johnson vs. Laflin, 103 U. S., 800.
National Bank vs. Watsontown Bank, 105 U. S., 217.
Courtright vs. Deeds, 37 Iowa, 510.

IV.

ASSIGNMENT TO MRS. TRAER — VOID OR VOIDABLE?

The court below declared the assignment to Mrs. Traer of the stock and dividends void. At most it was voidable.

Traer was not trustee of Clews and Tappan as to the stock and dividends. This is expressly held as to such a purchase of stock by the president of a railway corporation from a stockholder therein.

Board, etc., vs. Reynolds, 44 Ind. 509, 514, 516.

So as to the purchaser of stock by the director of a corporation from a stockholder.

Carpenter vs. Danforth, 52 Barb., 581.

Even where the directors and officers of a corporation contract with themselves touching the property or business of the corporation entrusted to their management and care, and which they control, it is the settled law of this court that such contracts are *voidable* and not *void.* In a case where the trial court had held such a contract absolutely void, this court reversed the decree below, and it was said, opinion by Mr. Justice Miller:

"But as this court said in the case of the Twin Lick Co. vs. Marbury, 91 U. S., 587, such contracts are not absolutely void, but are voidable at the election of the parties affected by the fraud. It may often occur that notwithstanding the vice of the transaction, namely, the directors, or trustees, or a majority of them, being interested in opposition to the interest of those whom they represent, and in reality parties to both sides of the contract, that it may be one which those whose confidence is abused may prefer to ratify or submit to. It is, therefore, at the option of these latter to avoid it, and until some act of theirs indicates such a purpose it is not a nullity."

Thomas v. Brownville, etc , R. R. Co., 109 U. S., 524.

And see

Wardell v. Railroad Co., 103 U. S., 651.
Pneumatic Gas Co. v. Berry, 113 U. S., 327.

In the Twin Lick Co. case it was said, opinion by Mr. Justice Miller:

"The general doctrine, however, in regard to contracts of this class is, not that they are absolutely void, but that they are voidable

at the election of the party whose interest has been so represented by the party claiming under it. We say, this is the general rule, for there may be cases where such contracts would be void, *ab initio; as when an agent to sell buys of himself, and by his power of attorney conveys to himself that which he was authorized to sell.* But even here acts which amount to a ratification by the principal may validate the sale."

91 U. S., 589.

From this it follows, *a fortiori*, that an officer, director, or trustee of a corporation, may purchase of a stockholder his stock and claim for dividends in such corporation, even if the relation of trustee and *cestui que trust* exists between such officer and stock holder, which is denied, and the contract is voidable and not void. A formal written assignment vests the legal title of such stock and dividends until rescinded and set aside.

Add to this the fact that the purchase from Tappan was by and for *Mrs. Traer* and not for Traer at all. Such is the special finding of the court below.

"To our minds the following facts are clearly established by the evidence:

* * * * * * * * *

"(9) Traer, in all of the transactions connected with the purchase of the stock, *acted* as *the agent of his wife.*

"(10) Mrs. Traer knew that her husband was trustee holding the assets for the stockholders of the company, and knew their value, and was guided in *her purchase*, by his advice and direction." (Record 296).

As Mrs. Traer had full power to make this purchase (see Iowa statutes, p. 4 hereof), and as no trust relation existed between Tappan and herself, it seems certain that her assignment was at most voidable.

Michaud v. Girod, 4 How. 503, relied upon to establish the proposition that Mrs. Traer's assignment is absolutely void, is clearly distinguishable from the case at bar. That was a purchase by an executor at his own sale of the property of his testator, and falls within the distinction drawn by Mr. Justice Miller in the Twin Lick Co. case supra, namely: "*When an agent to sell buys of himself* the contract may be *void ab initio.*"

An executor buying of himself falls within this rule. Bigelow on Fraud, 244-255.

Mrs. Traer is not a trustee at all. If she were so in any sense, she did not unite the character of purchaser and seller at her own sale but purchased of Tappan, who was *sui generis;* and if there was fraud, that rendered her solemn written muniment of title subject to impeachment therefor, but not a nullity.

Of course an action at law for damages for the alleged fraud might be maintained by the defrauded party if he elected not to avoid the contract. But there can be no pretense that this is such an action, although the court below, after holding that "it is an action of a stockholder of a corporation to recover dividends due him", in the next breath holds that it "is an action to recover for a fraud, a tort!"

But it is in fact a suit to rescind and avoid Mrs. Traer's assignment of the legal title. Before any other relief than an award of damages could be secured, such recission must take place in the case of a contract merely voidable, and the court below committed manifest error in holding that in this form of action "neither Tappan nor his assignee Clews were required to take any steps looking to rescission." (Record 298.)

The true rule is laid down in the Twin Lick Co. case, supra.

"The doctrine is well settled that the option to avoid such a contract must be exercised within a reasonable time." * * *

"In this class of cases, the party is bound to act with reasonable diligence, as soon as the fraud is discovered, or his right to rescind is gone." 91 U. S., 591--2.

"The principle that one who claims to have been drawn into a frandulent purchase must exercise care and vigilance to discover the fraud, must be prompt in repudiating his contract on the ground of fraud, is a sound one."

Upton v. Tribilcock, 91 U. S., 54.

"Parties who are shareholders and claim to be relieved on the ground of fraud, must act with the utmost diligence and promptitude" and authorities cited.

Ib. 55.

"When a party desires to rescind on the ground of mistake or fraud he must upon discovery of the facts, *at once* announce his intention and adhere to it."

Grymes v. Landers, 93 U. S. 62, and many authorities there cited.

Thus it is certain that there must be a rescission to obtain relief in this form of suit, and this right to maintain a suit for rescission is precisely what it is settled by the authorities above *cannot be assigned.* Hence the suit must fail as to Clews, who is merely such assignee.

V.

NO RESCISSION WITHOUT TENDER.

As to Mrs. Traer's plea that Tappan had affirmed her assignment by retaining all he received for it, the rule is that:

"The party who would disaffirm a fraudulent contract must return whatever he has received upon it. This is a plain and just principle. *He cannot hold on to such part of the contract as may be desirable on his part, and avoid the residue, but must rescind in toto, if at all.* * * * To retain the whole or a part only of what was received upon the contract is *incompatible with the rescission*, and hence the necessity of restoring what has been received upon it."

Mason, v. Bovet, 1 Denio, 74.

"If he be silent and *continue to treat the property as his own* he

will be held to have waived the objection, and will be conclusively bound by the contract, as if the fraud or mistake had not occurred."

Grymes, v. Landers. 93, U. S. 62.
See also Cooledge. v. Brigham, 1 Met. 547.
Perley, v. Balch, 23 Pick., 286.
Thayer, v. Turner, 8 Met., 552.
Brown, v. Schaler, 41 Ill., 195.
Ayres, v. Hewitt, 13 Me. 281.
Buchenau, v. Hornel, 12 Ill., 338.
Cooley, v. Harper, 4 Ind., 456.
Moore, v. Bart, 11 Iowa. 203.
Montgomery, v. Gibbs, 40 Iowa, 656.
Raynear, v. Neilin, 3 G. Green (Iowa), 315.
Baker, v. Robbins, 2 Denio, 138.
Bisbee, v. Ham, 47 Me., 543.
Potter, v. Monmouth, Ins. Co., 63 Me., 442.

In a suit in equity it is possible that a tender in the bill would be good. But the original bill herein demanded everything and tendered nothing. (Record 8). The amendment making Mrs. Traer a party did the same. (Record 25-6).

February 3rd, 1880, after the suit had been pending two years, and great cost and expense entailed on defendants below, there was an amendment offering to deduct *from what was found due Clews*, the amount paid Tappan for the *stock*—nothing for the dividends. (Record 34).

Later still, by amendment, this offer was renewed, (Record 39). There was never a formal tender, nor unconditional offer to return what had been received. *It was always conditional on the success of Clews in this suit.*

It was not denied by the court below that a tender was necessary to rescind, nor was it held that the offers in the pleadings were sufficient to maintain a suit for rescission. But it was said "that no rescission was necessary," and "that this is not a suit to rescind." As this position cannot be maintained, it is pratically a concession that a tender was requisite, and that the suit cannot be maintained without one.

VI.

CLEWS HAS NO TITLE.

1. As has been pointed out, Clews does not show that he had received his discharge in bankruptcy when he procured from Tappan, trustee in bankruptcy of his estate, the assignment on which he sues, paying therefor *one dollar "and a certain bond."* (Record 214, also 203).

It was surely not competent for Clews while a bankrupt to purchase anything belonging to his own estate from his own trustee, and pay for it with his own bond, due in the future, on which nothing had been paid when Tappan's deposition was taken, (Record 203-4) and on which it is inconceivable that anything ever will be paid for the benefit of Clew's creditors.

2. If Tappan held a valid claim against the Traers he was without authority of law to sell it to Clews for a bond or obligation to pay. His powers in this respect were those of an assignee in bankruptcy, (U. S. Stats., Sec. 5103) who can only sell for cash. The whole tenor, object and scope of the bankrupt act was to convert the bankrupt's estate into money, and distribute it among the creditors speedily. In this case the dollar actually paid was given to Tappan's clerk, and nothing was paid on the bond January 12, 1880, over two years after the pretended assignment to Clews. (Record 203-4.) Such a transaction vested no shadow of interest in Clews, and this objection may be taken by Mrs. Traer, who holds the legal title by her assignment, against one who questions her title, and who must have a *better* not a *less* right than she, in order to do so successfully. She pleads this by her answer. (Record 27.)

Evidently from the guarded manner in which Tappan and Clews speak of the "bond" nothing is to be paid on it unless realized from this suit. Where will the amount of the bond go then?

Under the *law*, Clews has taken nothing by his alleged purchase, Does the payment of one dollar give him any standing *in equity*? His situation seems to be aptly described by the language of Lord Abinger in Prosser v. Edmonds, quoted by this court with approval in Graham v. R. R. Co., supra:

"All our cases of maintenance and champerty are founded on the principle that no encouragement should be given to litigation *by the introduction of parties to enforce those rights which others are not disposed to enforce. There are many cases where the acts charged may not amount properly to maintenance or champerty, yet of which upon general principles, and by analogy to such acts, a court of equity will discourage the practice.*"

Respectfully submitted.

N. M. HUBBARD.
CHAS. A. CLARK.

115-528

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Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN W. TRAER ET AL.,
Appellants,
vs.
HENRY CLEWS.

IN EQUITY. No. 46.

BRIEF FOR APPELLEE.

FRANK G. CLARK,
LLEWELLYN DEANE,
Attorneys.

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN W. TRAER et al., appellants,
v.
HENRY CLEWS.
} In Equity. No. 46.

Appeal from the Supreme Court of Iowa.

STATEMENT OF THE CASE.

The original petition was filed January 17, 1878. It alleges that Clews was a stockholder, owning 50 shares of stock in the Cedar Rapids and Northwestern Construction Company; that Clews was adjudged a bankrupt November 28, 1874, and J. Nelson Tappan appointed trustee in bankruptcy of his estate February 19, 1875; that the said construction company went in voluntary dissolution February 23, 1875, and John W. Traer *et als.* were made trustees to take possession of the assets and convert them into money, pay the debts, and divide the remainder among the stockholders.

Though dividends were made and declared on Clews' stock, amounting to some $15,000, they were carefully concealed from him and his trustee in bankruptcy, and the officers of the company, by Traer, who, as trustee, had substantially sole management of the affairs of the company. It is charged that he conspired with certain other parties to cheat and defraud Clews and his estate in bankruptcy by false representations that said Clews' stock was not worth over $600, and that, in pursuance of this conspiracy, Traer, personally and through his agents, induced Tappan to transfer the said stock to his,

Traer's, attorney or agent for $1,200, but in fact for the use and behoof of said Traer, while Traer had actually in his hands all this time some $10,500 in cash on account of said stock.

This suit was brought by Clews as the assignee of Tappan, trustee in bankruptcy, to recover the difference between the cash Traer as trustee collected on account of said stock and the amount paid by Traer as above.

In October, 1879, Mrs. Traer, wife of J. W. Traer, was made party defendant by an amended petition, and January 9, 1880, by an amendment to the petition making Mrs. Traer one of the parties defendant, it is stated that her connection with the fraud was not discovered till September 24, 1879.

In order to a full understanding of the fraud and conspiracy of which we complain, and from which we have sought relief in this action, it will be necessary that we go somewhat into the history and detail of all the transactions.

One of the points in defence and the ground of the appeal is that this action is barred by sec. 5057 of the U. S. Revised Statutes.

ARGUMENT.

TRAER MADE TRUSTEE OF THE CONSTRUCTION COMPANY.

The Cedar Rapids Northwestern Construction Company was organized in ——, 1870, with a capital stock of $500,000, in 500 shares, the plaintiff subscribing for 50 shares therein, the main stockholders being stockholders, officers, and promoters of the Burlington, Cedar Rapids & Minnesota Railway Co.

It flourished for three or four years, until the crash of 1873, which, crippling many a larger enterprise, seriously impaired the credit and standing of the said railway company, which in turn embarrassed its satellite, the construction company. The era of railroad building seeming at an end, the stockholders of the construction company cast about to see what to do. Early in the fall of 1874 a committee was appointed looking

to its dissolution and a division of its assets among its stockholders, and proceedings were had from time to time, as the record very fully discloses, until the 15th of February, 1875, when the work of dissolution was completed. John W. Traer and Wm. Green were duly appointed trustees. (Page 43, int. 12; Ex. H, p. 235.) Afterwards Dr. Ely was put in Green's place. (Ex. 4, p. 240.) But Ely does not appear to have taken any active part. Traer alone had a salary. (Ex. P, p. 239. See Ely's testimony, p. 130.)

At this time, or not long after, the company was indebted on account of dividends to Henry Clews, $10,500, (int. 15, p. 99; p. 100; Ex. D, p. 232,) which, with interest, approximated $11,500. (Int. 46, p. 46; 12, p. 131.)

Traer, entering upon the active discharge of his trust, was familiar with every transaction of the company. Henry Clews had been adjudged a bankrupt 28th of November, 1874, and was discharged 24th of December, 1875. (Int. 213, p. 213.)

TRAER DISCOVERS THAT CLEWS HAD NO CERTIFICATE OF STOCK.

Traer, discovering that the certificate calling for 50 shares of stock to which Henry Clews was entitled, had never been delivered to him or gone out of possession of the company, (int. 121, p. 53; int. 22, p. 201, and Ex. 9, p. 271,) visits New York city in July, 1875, and again later, in October, 1875, and has several interviews with Clews. He soon finds that Clews had not scheduled it in the bankruptcy proceedings, which omission plainly arose from the fact that, while entitled to this stock, it had never been delivered to him, but had remained in the stock-book until the searching and prying eyes of Traer had sought out and found it. Traer informs Clews that no dividends had been declared on these shares, but there was money in his hands which would soon entitle the holder of that stock to a dividend of $200. Traer tries to induce Clews to make an assignment—dating it back—and Traer putting in his talents and Clews his stock they would form a

partnership and divide the spoils and cheat and defraud the Clews estate—suggests the name of Prentiss Brothers as assignees, and even draws two (2) blank assignments for Clews to sign. (Int. 8, p. 206.) Clews did not give him any definite answer at either visit. Traer very studiously conceals the very existence of the $12,000 dividends. A short time after Traer's return from his October visit to New York—November 8, 1875—he writes Clews marked PRIVATE. (Ex. 26, p. 248.) This is a key, that, were there no other evidence, unlocks the combination that Traer was attempting to have formed. Clews replies under date November 13, (Ex. I, p. 236,) referring Mr. Traer to his trustee, Tappan, and refused to be a party to any such scheme. The next approach that Traer makes appears to be in the direction of Judge Tracy.

TRAER SEEKS TO BUY CLEWS' INTEREST.

Traer sought to interest him in a proposed partnership for the purchase of Clews' interest, stating, among other things, that it could be obtained at a nominal sum, and that there were some $10,000 in the bank of Traer Bros., at Vinton, (of which firm this plaintiff in appeal was a member,) that were dividends belonging to that estate; that they would divide and each would be particularly pleased at the other's making something.

It is well to remark here that Traer held out to view the tempting bait of $10,000 in dividends that he had repeatedly solemnly sworn that he at that time and long after knew nothing about. (Pp. 192–'3.)

About February 1, 1876, Traer arrives in New York, sees Tappan, Southwick, Tappan's clerk, and thinks he can suggest a purchaser of that stock. He makes those memoranda and writes that letter to Tappan, all alike remarkable for the suppression and concealment of the very facts that Tappan would desire most to know. He states he has collected and paid $12,000. (Exs. 1 and 2, p. 269.) He had actually collected $31,000 and had paid out $13,000, as his own books show. (See Ex. 65, p. 259.) He had at that date, February 18, 1876,

$18,000 in cash on deposit. He says nothing about this. He says there will be enough ultimately to pay from $8.00 to $12.00 per share. The $18,000 then on hand would have paid from three to four times that amount. He conceals from Tappan the existence of the $12,000 dividends due the Clews' estate. His statement made to Bever for Tappan (int. 125, p. 53, Ex. E, p. 233) and statement made to Southwick for Tappan (int. 22, p. 20, Ex. 9, p. 271) all support this, so it could not have been a blunder or accident.

Traer explains (int. 168, p. 58) what he meant by this Exhibit E, when he said the indebtedness was about $15,000; that he included his claim of $10,549 with the bills payable, right of way, and attorney's fees, so that it might appear that at the time he was profoundly ignorant of this claim on behalf of the Clews' estate for some $12,000, this the 14th day of February, 1876, 17 days before the alleged purchase of all the interest by somebody for somebody, he actually knew nothing of these dividends; that Judge Tracy's account (p. 192–'4) of what transpired the fall before is a myth; that that certificate or letter of Rowley, dated February 20, 1875, (Ex. D, p. 232,) had not been written and delivered at that time.

He refers Tappan—after suggesting that perhaps he might be able to find a purchaser—to Mills & Blake and J. L. Bever as men who could furnish him with information (int. 50, p. 70)—men that he knew had no knowledge of its status. (Int. 15, p. 199; int. 21, p. 201; Ex. 2, p. 269; Ex. 31–2, p. 250.) He cautions Tappan to proceed in HIS OWN WAY and returns to town and makes the Exhibit E referred to, which Bever sends to Tappan—wonderfully like the statement left by Traer when in New York. (Ex. 4, p. 270.)

HOWARD AND ARMSTRONG HELP TRAER.

Previous to returning he sees Armstrong and prepares him to play the part he is expected to in the coming arrangement. He arranges the details (page 193, int. 9) "verbally from John W. Traer," "in case he had an order from the West,"

(page 48, int. 85 ;) comes home about February 10, 1876, calling and settling the details with Howard in Chicago ; speaks to his wife and recommends its purchase to her, as he says, but it would seem that she did not comprehend the situation very clearly, for she testifies that, although she met Howard when at Cedar Rapids, yet she did not know his errand there. (P. 218, int. 27.) He goes to Vinton and BALANCES his books of trustees, (see Ex. 65, p. 259, and 69, 366,) and, fully prepared with all the information necessary, writes up the statement that Bever is to send to Tappan, (Ex. E,) writes Tappan enclosing the $200 dividends and states no certificate, was ever made. (Page 271, Ex. 9.) Subsequently, on the 24th of February, 1875, Traer writes Tappan enclosing certificate, as he claims, (page 248, Ex. 27,) but of which we have serious doubts. But two or three weeks before this (p. 187, int. 21) Armstrong made an offer for stock which was subsequently accepted by Tappan by note, which does not appear as exhibit, for Armstrong, as attorney for Traer, refuses to attach it. Replying to this under date of 26th of February, (page 271, Ex. 8,) Armstrong advises Tappan to wait, as the certificate is on the way, so he is advised. Who advised him except Traer, his principal ? Who knew of the finding except Traer, Tappan's trustee ? Showing conclusively that Traer was in correspondence with Armstrong, and the moving power, and that Armstrong was, as he testifies, the attorney of John W. Traer. (Int. 21, p. 207.) No Traer Bros. or Mrs. Traer or J. C. Traer is known to him. By recurring to page 271 it will be seen that Tappan accepted Armstrong's offer of $1,200 for the stock before Traer makes it convenient to find the certificate. The $1,200 is paid March 4th, 1876, (int. 10, p. 198,) and the certificate sent back (int. 16, p. 186) probably by next mail, (nominally to Howard, but no doubt to Traer,) who should get it by the 7th of March, 1876, on which day he undoubtedly did receive it. He sets down the same day and writes Tappan, essaying to throw a little dust in Tappan's eyes, (see int. 22, p. 201, Ex. 9, p. 272,) all of which was a myth, as shown by

the testimony of Martel. (P. 216.) This closes the first part of the transaction. Traer has the certificate, but not the dividends. There must be some scheme concocted to cover the transfer, for it might excite suspicion and it might come to the ears of Tappan or Clews if he should openly admit he had purchased both stock and dividends. The performance proceeds. Suppose, now, that Traer acknowledges the receipt of the certificate on the 7th day of March, Armstrong would receive the acknowledgment on the 10th, and if there should be any connection between Howard, Traer, and Armstrong, Armstrong should write Howard the 10th. Promptly Armstrong writes Howard the 10th. (See Ex. B, p. 231.) We have shown that three days is the usual time for letters between New York and Cedar Rapids.

ERRORS IN FIGURES AND DATES.

Now there are two errors in this letter. It is written to Howard at Cedar Rapids, which fully establishes the dummy part Howard was playing for Traer, and, second, it says, "please find enclosed certificate No. 48," showing that the certificate was not then at hand, for with the certificate on hand it would not have been possible to make the mistake there, for no such certificate was ever issued. It should have been No. 40. The certificate had been sent on the 4th to Traer, and Armstrong, in making up a case without the papers before him, mistook 40 for 48 in Traer's letter instructing him to instruct Howard. This notation obtains all the way through Traer's apocryphal record. Having now arranged the programme, which took several days, Traer sets down and makes up the voucher, (Ex. C, p. 232,) computes the interest, and makes ready for the advent of Howard. He dates this the 19th of March, 1876, and that date begins to run the gauntlet of this case. It was undoubtedly the day on which Traer made up the record and prepared the voucher, but it was Sunday that year, and Howard did not come to Cedar Rapids on Sunday, but did actually put in an appearance on the 20th,

the Monday following. Rowley's certificate is indorsed as received the 19th (see Exhibit, page 232, and report from Vinton, also received the 19th) and the first actual knowledge of the dividends, Traer would fain persuade us, dawned upon him on that mythical Sunday.

In the face of all this array of testimony Traer sticks to his text, and tries to establish the fact that until the 19th day of March, 1876, when, as he claims, Rowley certified and balanced the books, (see Ex. D, p. 232,) his knowledge of the matter was limited to the fact that there was an unbalanced account on the book which he had never looked into and investigated, and which Rowley testifies any person could have seen at a glance, showed a balance of $10,500 due the Clews estate. (Int. 15, p. 98; Ex. 29, p. 249; Ex. D, p. 232; int. 104, p. 51.) True, this letter of Rowley's, or certificate, was dated February 20, 1875, the date of the dissolution, but Rowley has no remembrance of writing it at any time other than at the time of its date, but has good reasons for believing it was written on or about the time of its date, as required by the resolution of the Construction Company, yet Traer endeavors to fix the date about 13 months later, and in order so to do writes thereon: "Received this notice on the 19th day of March, 1876, and filed the same.—J. W. Traer, Trustee."

Now, this 19th day of March, 1876, fell upon Sunday, which carries with it the idea that Mr. Rowley was up to his office transacting business on Sunday, which Mr. Rowley repudiates. (See Rowley's deposition, p. 100.) Our theory of how this happened—for this date is repeated several times in the trustee's record and in Traer's deposition—is that this addition to the voucher was made out by Traer. Tappan and Clews discovered the loss of the dividends about the middle of February, 1877, and consulted with Armstrong February 28, 1877, who doubtless consulted with his chief and employer, John W. Traer. In fixing up this date Traer forgot to consult the almanac, and blundered into giving a date that betrays him.

Howard appears Monday morning the 20th, and, to the benighted and mystified stockholders, was the attorney of the assignee of Henry Clews. Howard says, repeated three times, "He then thought and so believed." (P. 189.) The stockholders are entirely hoodwinked. Now all this by-play, this mysticism, was not for the purpose of amusing the stockholders; it was to prevent Tappan and Clews from coming to a knowledge of the facts; so long as the Cedar Rapids stockholders were in the dark so long would Tappan and Clews be in the fog. Fondly hoping that the transaction was covered, Traer puts the $11,913.75 in his pocket. This is but a plain unvarnished statement of what substantially occurred; a large amount of the details are necessarily omitted, and the record is interminably long and necessarily so from the difficulties and obstructions encountered in getting at the bottom facts.

Armstrong and Howard are but automatons. They move only as they are moved, and J. W. Traer alone moves them. The letter of Armstrong (Ex. B, p. 231) purporting to be to Howard was to remit, but he *deposited* (p. 190) with Traer Bros., of which firm John W. Traer was a member. (Int. 70, p. 247.) Traer never parted with the control of that certificate of stock. Possessing himself of it in the beginning, he held to it as the apple of his eye. He first anticipates Tappan's inquiry for the certificate by saying no certificate was issued, but 10 days after writes that the certificate had turned up in the stock book. Ten days later he makes haste, as he claims, to write a letter to Tappan enclosing the certificate. He annexes a copy of the letter—(see Ex. 27, p. 248)—"old stock books," he says. Now he discloses in his testimony that there was only one stock book and only 40 certificates issued. Traer's letter (Ex. 27) was undoubtedly written and sent, *not* to Tappan, but to Armstrong, who two days after the sending of that letter writes Tappan, (see Ex. No. 8, p. 271:) "*Am advised that the*

certificate has been forwarded." How did Armstrong know, only *two days* after Traer says he forwarded the certificate to Tappan, that the certificate was coming? Southwick, who, if living, could throw a flood of light on this whole transaction, is dead and cannot refute Traer, and Armstrong takes shelter under that ægis of protection; he was Traer's attorney. Yes, the certificate was forwarded to Armstrong by Traer, and Armstrong presented and got the transfer and paid the $1200 March 4th, 1876, enclosed it the same day to Traer, so that the certificate was never out of his hands, except the brief time he was engaged in hoodwinking William Greene and Secretary Rowley, and then he had his eye on the sharp attorney, fearing, as all guilty souls do, that something might happen to mar its accomplishment.

THE CERTIFICATE AND ITS ALTERATIONS.

The alterations are two, viz., the inserting of the figures "50" before the word *shares*, and the inserting the name of "Alla D. Traer" as assignee. There is no evidence that Tappan ever intended to assign the certificate to *Alla D. Traer*, nor that Armstrong ever intended to so assign it. There is no evidence that Alla D. Traer ever purchased the certificate of Armstrong, nor that Armstrong ever delivered it to her; but, on the contrary, Martin Howard, who acted as Armstrong's attorney, says, (p. 188:) "My authority * * * was simply to collect dividends, and *not to sell the certificate.*" Page 270: "The certificate of stock I think I *surrendered* to the *Construction Company, or its receiver*, and took a receipt; notified my client, Mr. Armstrong; received a letter shortly afterwards, acknowledging what I had done to be correct and in accordance with his instructions." Then he becomes very mysterious as to what he did with the money; but we have discovered that it soon found its way into the pocket of the wife of our immaculate trustee, after it had been surrendered to him as "receiver" of the company, and then, in order to create an appearance of title to the same, nearly two months

afterwards, with his own hand and without authority or direction from any one, wrote the name of his own wife in the assignee blank. Nor does the defendant Alla D. Traer enlighten us as to how she became possessed of said certificate, except that, (int. 52, p. 219,) "I can't recollect when this certificate of 50 shares first came into my possession. I received it from my attorney, J. C. Traer." She repeats the same thing substantially on page 323. She does not disclose when "the receiver" of the company passed it over to her "attorney, J. C. Traer." Nor does J. C. Traer, the "attorney," whose name is used as a cat's paw to rake in his brother's chestnuts, appear any where to enlighten us as to these mysteries. After most diligent inquiry and searching, all that we can learn is that she has the certificate, and her name is written therein, after it was "surrendered to the Construction Company, or its receiver," by the said receiver himself, and that some time in the indefiniteness which is characteristic of this case, she can't remember when, but before her deposition was taken in 1880, she became possessed of the paper itself.

TRAER IS THE PURCHASER.

Several months having elapsed, Traer openly and ostentatiously announces that he has purchased the Clews *stock;* enters on his trustee record May 8, 1876, the recognizance of Mrs. Traer; tells Dows that he has removed a thorn from his flesh. (Int. 45, p. 280.) Dows did not know what he meant, and Traer had to explain. Traer informs Dr. Ely that he had purchased the *stock* of the assignee in bankruptcy of Henry Clews, but not till some considerable time after the payment of dividend. (See Dr. Ely's deposition, int. 32, p. 132.)

The dividends have gone to Clews' estate, and he, Traer, has only purchased the stock. This is the impression that Traer seeks to convey to Dows and Ely and others.

But appellants allege and say that Traer did not purchase this stock, these dividends, this $12,000 in cash. That he did not aid the matter in any way; that he only casually knew of

the disposition of the trustee to sell, and mentioned this to his wife—only this and nothing more, and all else followed. Now, in order to make this in any manner credible, it is necessary that Traer should not know of these dividends; otherwise it might be strongly suspected that he had a hand in the matter. Let us see how this is demonstrated. Armstrong says that he acted as the attorney of John W. Traer; says he don't know Traer Bros., nor does he know Mrs. Traer. John W. Traer says that Armstrong acted for Traer Bros., of which he was a member, and for John W. Traer. (Pp. 48 and 49.) Mrs. Traer employed J. C. Traer, of Traer Bros., the partner of her husband. (Int. 1, p. 217; int. 22, p. 218.) Armstrong alone knows J. W. Traer and one Howard, whom he calls A. D. Howard, and for whom he acted with J. W. Traer; but, when questioned further, takes shelter under his privilege of attorney. Again, Mrs. Traer says she knew nothing of the existence of these dividends until long after Howard's advent and departure. She saw Howard, conversed with him, but had no knowledge of Howard's business at Cedar Rapids; her knowledge of the dividends came about in a CASUAL WAY long after. She is certain that this knowledge only came to her some time after Howard was in Cedar Rapids. (See int. 27, p. 218.) And in answer to interrogatory 52, (p. 219,) referring to her knowledge of the dividends, she naively answers, "How should I when I did not know of them?"

Further, not a line, not a word of writing anywhere, appears connecting either Traer Bros. or J. C. Traer with the alleged purchase of those dividends and the equitable interest in the assets pertaining to the estate of Henry Clews.

J. W. Traer says the purchase was made through Traer Brothers, and Mrs. Traer testifies through J. C. Traer, but in her sworn answer says Traer Bros.

How does this leave Mrs. Traer as to the purchase of these dividends? Tappan says he never sold any dividends to any one, and knew of no dividends at the time of the sale. (Int.

23, p. 201.) She says she did not know of any till after the purchase of the stock. (P. 219, int. 52.)

In all the purchases of stock and investments, she says, "I acted upon the judgment and information of my husband." (P. 222, int. 8; p. 223, int. 15.) She employed J. C. Traer in this purchase only.

In this connection we may ask, is it reasonable or probable that Tappan would have sold $12,000.00 in cash and property undistributed of the probable value of $5,000.00 for 10 per cent. of the actual cash on hand and collected? Can there be any question as to the fraud? Is this anything but gross cheating? Isn't cash on deposit worth more than 10 cents on the dollar? There is no pretence that Clews or Tappan knew anything about these dividends anywhere.

Rowley, Dows, Wm. Greene, Geo. Greene, and Dr. Ely all testify that Traer was more familiar with the affairs of the Construction Company than any other member of it, and they each and all knew that there was a credit to the Clews stock of some $10,000. At a meeting of the stockholders, where they and Traer were present, (see p. 339, last par., Ex. O,) the proposition was made that in the event any member should purchase the stock it should be for the benefit of all the stockholders.

Judge Tracy also testifies (int. 7, p. 192) that Traer distinctly told him that there were some $10,000 in dividends belonging to the Clews interest lying in their (Traer Bros.') bank. This in the fall or early winter of 1875.

THE CONSPIRACY DISCOVERED.

It may be proper to continue this bit of history down to and subsequent to the institution of the suit. About the first of February, 1877, the first intimation of the swindle came to the ears of Clews (int. 28, p. 202) through Gen. Winslow, (int. 2, p. 214,) and on the 28th of February Clews called upon Armstrong, and learns there that Armstrong was but an agent, (he had been the purchaser previously,) and that his principal

was defendant Traer. (Int. 21, p. 209.) Of course in eliciting this information he necessarily communicated the fact of his knowledge of the steal to Traer through Armstrong, all of which gave Traer an opportunity to make up the record, arrange, cover, and mystify.

THE DIFFICULTIES IN BEGINNING THE SUIT.

We had to commence with the proposition that somebody had our money, and when last seen it was in the custody of John W. Traer. The *modus operandi* by which he had divested himself of his trust, and how he had disposed of the swag, had to be arrived at by long and tedious processes—investigations wherein he was the central figure and had control of all the avenues of information, and everything was as carefully planned and adroitly carried ont as might be expected from a man of his skill, shrewdness, and ability.

The record of the proceedings before R. H. Gilmore, (p. 274,) and the *habeas corpus* proceedings before Judge McKean, disclose the difficulties we encountered in getting the defendant to testify. His answers to the interrogatories attached to the petition were intended to mystify and conceal, and gave no information and afforded no clue to the purchasers or holder of the certificate of stock, which, with his own positive denial of any knowledge of its whereabouts and the name of the pretended owner still concealed, left us largely at sea. This consumed the time until the 25th of September, 1879, when the discoveries we then made indicated that it might be very necessary to make Mrs. Traer a party.

Accordingly she was made a party on the 28th of October, 1879, and her answer was filed on the 5th of December—just 30 days prior to the session of the circuit court.

The taking of testimony was then resumed, and on the 22d of December Mrs. Traer took the stand and testified, admitting she was the owner of said certificate; that it was among her papers, but in the immediate custody of Hubbard & Clark, her attorneys, and refused then to produce it for the purpose

of examination and copy. Service of notice to produce certificate was accepted, and plaintiff asked commissioner to certify record to circuit court; but on the promise of Hubbard & Clark to produce same at subsequent time, proceedings to compel her to produce were not then insisted on. (See p. 220.)

Finally, said certificate was produced and exhibited on the 31st of December, 1879, five days before the session of the court at which the same was to be tried. But while exhibiting said certificate Mrs. Traer refused to part with the custody of said certificate, or even to have it photographed in order that Tappan, whose deposition had not then been taken, might have an opportunity to examine the original or photograph, and explain the certificate and the interlineation appearing on the back of it. Having no opportunity to do this, forced us to amend late in the trial of said case.

CONCLUSIONS FROM THE FOREGOING.

I.

John W. Traer became the trustee of the stockholders of the Cedar Rapids Northwestern Construction Company on its dissolution and his acceptance of the trust. The company disappeared. It no longer had a nominal existence. Its officers became private persons. Its certificates of stock became mere *indicia* of the distributive share in the assets to which the holder was entitled at the time of its dissolution. Their sale or transfer could convey nothing.

The agent dies with the principal, so that on the death of the corporation the certificates become effete. Traer was the trustee of each stockholder to the same extent as he otherwise would have been had he been the executor or administrator of an estate, assignee in bankruptcy, receiver, or guardian.

The administrator, after the payment of debts, must distribute the balance remaining among all the heirs, and he is the trustee of each, and each heir may have an action against such administrator on his official bond for their distributive share.

II.

Now, in all such cases the trustee, be he receiver, executor, or assignee, is strictly forbidden to meddle with or be interested in his trust estate. He is to have no interest whatever in it generally, or in any distributive share, for he is equally the trustee of each stockholder, creditor, or other representative as he is of the whole. The policy of the law is such that he will not be allowed to become, even in a remote degree, interested adversely to his beneficiaries.

Trustees have sought out many ways in order to avoid the consequences of dealing with the trust estate, but courts have found little difficulty in bringing them to grief.

III.

But it is claimed that Mrs. Traer purchased the stock and dividends, and the distributive share in the assets, and not defendant John W. Traer. This strikes us as not only very tame and artificial, but that it carries its own refutation on its face. She testifies that she relied upon *her* husband's judgment and information in all the purchases of stock and investments; that she did not even know of the existence of the dividends until long after the pretended purchase of the stock and conversion of the dividends. Where were the dividends lying during that time? Who was the legal owner or custodian? Is it seriously pretended that the principal can avail himself of the fraudulent acts of his agent?

IV.

But is it permitted the trustee to set up a man of straw, give him the necessary information, provide the means by which he can accomplish his purposes, arrange and suggest the details, throw dust in the eyes of his *cestui que trust*, and conceal and misrepresent the true condition of the trust estate, and, when the arrangements are complete, recommend to his bene-

ficiary the sale, knowing that his wife is the purchaser; that she is relying on his judgment and information; that he has set up everything, planned everything, and concealed everything where concealment was necessary?

Story on Agency, note § 211, cites Davoue *v.* Fanning as the leading case, which has been followed without qualification.

Again, in Story on Agency, §§ 249 and 250, it is laid down "that the principal cannot, of his own mere authority, ratify a transaction in part and repudiate it as to the rest." "He must adopt the whole or none." So that Mrs. Traer, discovering the fraud and chicanery by which she came into the enjoyment of this trust property, although ignorant of it at the time, and although unauthorized, yet ratifying the one she must necessarily the other. She takes the estate with the clog, as one aptly expresses it. Mundorf *v.* Wickersham, (3 Am. Rep., 531,) is directly in point, where a party prevailed on another to give his principal his note for $300, by giving in the name of his principal an indemnifying receipt, and the maker paying the note brought suit on the receipt, it was held that the principal was liable on the receipt although made without authority of principal. (Citing 21 N. Y., 238, and 31 N. Y., 619.) And it makes no difference whether these misrepresentations were made by some sub-agent or other person acting without authority. See Fitz Simmons *v.* Joslyn, 21 Vermont, 129, where Judge Redfield lays down this rule and cites a large number of authorities.

V.

The right to bring an action to force a trustee to account, or to set aside as void, or voidable, a purchase made by trustee of his *cestui que trust*, or to set aside any dealings of trustee with trust property, or to have decree that the purchase shall be held to have been made for the beneficiary, is not a personal right, but passes to heirs, or a receiver, or is assignable.

Such a right is most certainly assignable, omitting any claim of fraud. The assignment is found on page 13 of abstract, and is full and complete. Tappan assigns his claim to the plaintiff, who became vested with all the rights of the assignor. In this position we are fully borne out by the authorities.

This question came squarely before the court in Iddings *v.* Bruen, (4 Sanf. Ch., 243 on 296–7.) On page 296 (277) the chancellor says:

"Without admitting to the fraudulent character of these transactions, I cannot assent to the proposition that the right to avoid a trustee's purchase of the trust estate is personal to the beneficiary. It undoubtedly passes to his heirs or legal representatives, as the case may be, and it is a right in action, to which creditors may become entitled as certainly as they may to a promissory note."

See Moore *v.* Moore, 5 N. Y., 256; S. C., 4 Sanf. Ch., 38.
Ward *v.* Smith, 3 Sanf. Ch., 645 (*592.)

Dobson *v.* Ray, 3 Sanf. Ch, 66, was in that respect similar to Ward *v.* Smith.

Jewett *v.* Miller, 10 N. Y., 402.

In Conger *v.* Ring, (11 Barb., 356,) the action was brought by creditors and the action was sustained. See McMahon *v.* Allen, (35 N. Y., 403,) which covers our case in all respects on this point.

VI.

A claim for money or property obtained by false and fraudulent representations is assignable, so as to vest in the assignee the right of action, such as the assignor had before the assignment.

The fraud was consummated at Vinton, Iowa. The claim was assigned by Tappan to Clews in New York, (page 13.) Now the rights of the parties under this assignment must be determined by the law in Iowa or in New York. In both States our 6th proposition above is abundantly sustained.

"The test of the assignability of a claim or cause of action is whether it would *survive*. A right that may be transferred by operation of law has the elements of property and may also be *transferred by the act of the party*." 1 Estie's Pleading (2d Ed.,) 82, citing and approving.

Zogbaum *v.* Parker, (66 Barb., 341.) So stated in Bliss on Code Pleading, § 38 and notes. In Stewart *v.* Baldnston, (10 Kan., 131,) in an able discussion where Judge Story, in Comegys *v.* Vasse, (1 Pet., 209,) is cited and approved, the same view is taken. So also in the supreme court of our State in Gray *v.* McCallister, (50 Iowa, 498 on 502,) the same test is recognized. Such being the conclusion, it must be determined what causes of action survive.

See also Haight *v.* Hoyt, 19 N. Y., 464; and McMahon *v.* Allen, 35 N. Y., 403.

This reverses 34 Balb., 56, and 12 Abb., 275.
See Mason *v.* Raplee, 66 Barb., 180.

The positions here maintained are abundantly sustained in the decisions of other States.

Stewart *v.* Balderston, 10 Kan., 131.
Lazard *v.* Wheeler, 22 Cal., 139.
Couillard *v.* Johnson, 24 Wis., 533.
Lyson *v.* McGuineas, 25 Wis., 656.
Frim *v.* Corbett, 36 Mich., 318.
Gray *v.* McCallister, 50 Ia., 498.

VII.

It is sufficient in many cases where parties stand on the same footing if the plaintiff professes his willingness to refund, and asks that the allowance may be made in the judgment and decrees to be rendered, as in case of notes, worthless, given for goods, it has been repeatedly held in a recission by seller that it was sufficient to bring the same into court at the time of trial. (See Allerton *v.* Allerton, 50 N. Y., 670.) In Law-

rence *v.* Yates, (601 on 607,) the tender was made on trial, and this was held sufficient. Following and approving, Nichols *v.* Nichols, (23 N. Y., 264 on 267.) Further, there is no reason why the tender of the money should be made, as the amount can be deducted from the judgment sought to be obtained in our prayer for relief.

In Howell *v.* Remson, (11 Paige, 538,) where the action was by a client against an attorney who had purchased of his client, there the judgment upheld was for the amount of money that had come into the hands of the attorney by the transaction, less the amount that had been paid by the attorney for the assignment. See also to the same effect, where the same rule was adopted, in Slade *v.* Van Vechten, (11 Paige, 21;) Mitchell *v.* Moore, (24 Iowa, 394 on 397;) Wilhelm *v.* Fimple, (31 Ia., 131;) Binford *v.* Boardman, (44 Iowa, 53;) Montgomery *v.* Shockey, (37 Iowa, 107 on 109.) In the latter case it is said: "All that is required of plaintiffs is that they show a readiness and ability to do equity."

See also Gardner *v.* Ogden, 22 N. Y., 327.
Gam *v.* Beantly, 21 Ala., 633.
Coffee *v.* Ruffin, 4 Caldw., (Tenn.,) 487.

VIII.

The transaction in which a trustee deals with the trust property, or purchases of his *cestui que trust*, is either void or voidable at the election of the *cestui que trust*, and the latter may call the trustee to account for the value of the property or the proceeds when it has been converted into cash, or he may have the sale set aside and the property itself restored.

The courts have invariably acted upon the foregoing proposition, and the option has been given the *cestui que trust* as to which of the remedies he would prefer. Sometimes in the decree the election has been given, while in others the election has been made before the decree, and the chancellor has granted relief accordingly.

1st. In the following cases, which have all been referred to

previously, the transaction was set aside, viz: 14 Iowa, 425; 18 Iowa, 232; 11 Barb., 356.

2d. In the following cases the transaction was declared void and the trustee to restore: 3 Sanf. Ch., 592; 9 Wis., 370; 8 Iowa, 277 on 280; 37 Iowa, 331.

3d. In the following cases the trustee was decreed to account to his *cestui que trust* for the value or proceeds: 9 Wis., 195 on 198; 4 Sanf. Ch., 223 on 280; 4 How., 503 on 561; 1 Hoff. Ch., 192; 39 Iowa, 553.

4th. In the following cases the decree was that the plaintiff (*cestui que trust*) might elect to have the sale set aside, or to stand and the trustee's account for proceeds: 4 Sanf. Ch., 38; 1 Sanf. Ch., 148; 13 Wis., 26; 5 N. Y., 256.

5th. Trustee decreed to have made the purchase and to hold the property in trust for the ward, and that the purchase was made for his benefit.

Clark Ch., 464; 13 Wis., 26.

IX.

The decisions that the relation of trustee and *cestui que trust* does not exist between an officer of the corporation and the individual stockholders do not apply to this action, because—

1st. In this case there is no corporation. It is dissolved, and the relation of trustee and *cestui que trust* must exist direct.

2d. That the right of a stockholder in a dissolved corporation to a distributive share of what may remain after the company's affairs are settled is not STOCK, but a CHOSE IN ACTION, and is not negotiable, nor, as stock, is it transferable.

It has lost all the elements of stock. This matter was so expressly decided in James *v.* Woodruff, (10 Paige Ch., 541; see p. 546.)

3d. The right to a distributive share in the net assets of a dissolved corporation is a mere equitable right—a *chose in action*—and, in order that such right may be assigned, the act of assignment must be plain and explicit.

4th. The appellants nowhere allege that they or either of them, by agency or otherwise, purchased the distributive share, nor do they or either of them allege that they own such distributive share.

X.

Certificates of stock in a *live* corporation (and *a fortiori* in a dead one) are not, like bills and notes, transferable by mere endorsement and delivery, so as to affect the rights of other parties than those to the transaction. A party claiming under endorsement in blank must prove the *contract* and *consideration*.

See Code of Iowa, § 1078.

The Code provides that the transfer of the stock shall be entered upon the books of the company. How can such transfer be made and entered up after there is no company, no officers to make the entry?

See also 2 Conn., 529; 3 Conn., 544; 5 Conn., 246; 6 Conn., 552.

XI.

Whatever right, title, or interest Armstrong may have acquired in the distributive share of the late company's assets, and in the previously accrued dividends by the transaction with Tappan, based upon the fraud and concealments of Traer, (whose attorney Armstrong was,) and whatever may have passed to Armstrong, notwithstanding he was the attorney for Tappan's trustee, in disguise, there is no proper evidence that the interest that Armstrong acquired ever passed out of him to Mrs. Traer.

XII.

The wife, Mrs. Alla D. Traer, says she made her purchase on the judgment and information of her husband. At all

events, he was her agent, if not his own, in employing James Armstrong and Martin Howard in writing her name in the blank assignment on May 8th, 1876; and whether she knew of his fraud and misrepresentations or not, she cannot enjoy the fruits without adopting the means by which they were procured.

Broom's Legal Maxims, *677, gives us the maxim, *Que Sentit commodum sentire debet et onus*, and on page *679 makes it applicable " where a party adopts a contract which was entered into without his authority, in which case he must adopt it all together. He cannot ratify that part which is beneficial to himself and reject the remainder; he must take the benefit *cum onere*."

Perry on Trusts, § 211, states it, perhaps, so as more closely to apply to Traer and wife.

See also—

Mundorf *v.* Wickersham, 63 Penn. St., 87.
S. C., 3 American Reports, 531.
Elwell *v.* Chamberlain, 31 N. Y., 611 on page 619.
Bennett *v.* Judson, 21 N. Y., 238.
Wilcox *v.* Iowa W. University, 32 Ia., 367 on 375.
Fitzsimmons *v.* Joslyn, 21 Vt., 129.
Kerr on Fraud and Mistake, 152.
Rockford R.R. Co., 65 Ills., 224.
Kibbe *v.* Ins. Co., 11 Gray, 163.
Anderson *v.* Rome, 54 N. Y., 334, 340.

XIII.

Certificate of stock No. 40 of Cedar Rapids Northwestern Construction Company, Exhibits "A " and " B," (page 27,) in the light of the testimony admitted, should not be received as evidence in this case to prove any right in Alla D. Traer.

1st. Because it appears *aliunde* that the said certificate, if assigned at all, was assigned to James Armstrong, and it does not appear anywhere that he ever assigned the same to Alla D. Traer or any other person.

2d. The certificate, since it left the hands of Tappan, has been altered by adding the figures "50" and the name *Alla D. Traer* to the blank assignment without the express or implied authority of Tappan, over whose signature the alteration was made.

When Mrs. Traer comes into court and claims an advantage under the altered instrument, whether she authorized the alteration or not, it becomes her act and she is bound by it. (See authorities under our 13th proposition.)

Also Newell *v.* Mayberry, 3 Leigh, 250; S. C., 23 Am. Dec., 261.
Wheelock *v.* Freeman, 13 Pick., 674.
Homer *v.* Wallace, 11 Mass., 309.
Willard *v.* Clark, 7 Met., 437.
Smith *v.* Dunham, 8 Pick., 249.
Ford *v.* Ford, 17 Pick., 421.
Commonwealth *v.* Bank, 98 Mass., 16.
Greenfield Bank *v.* Stowell, 123 Mass., 196.
Glover *v.* Robin, 49 Ala., 219.
(S. C., 20 American Repts., 272.)
Gillispie *v.* Kelly, 41 Indiana, 158.
Vogle *v.* Rippin, 34 Ill., 100.
Matteson *v.* Ellsworth, 33 Wis., 488.
2 Parsons on Notes and Bills, 572.
Woodworth *v.* Bank of America, 19 Johnson, 391.

3d. The alteration is material, therefore it does affect the paper. This question came squarely before the supreme court of Wisconsin, *In re application* of *Murphy, etc.*, 51 Wis. * * * (Northwest Reporter, vol. 8, No. 11, p. 419,) where it was expressly held, in a thoroughly considered opinion: "*All transfers not so entered on the books of the corporation are absolutely void; not because they are without*

notice, or fraudulent in law or fact, but because they are made so void by the statute." Citing:

Fisk *v.* Carr, 20 Maine, 301.
Skowhegan Bank *v.* Cutler, 49 Maine, 315.
Weston *v.* Bear River, 5 Cal., 186.

The Wisconsin statute, as copied into the opinion, is almost word for word the same as that of Iowa.

The paper itself, under all the circumstances, cannot be evidence of any title to the same in her, with the assignee blank unfilled, and it became material to have her name inserted in order to give a plausibility to her claim upon the same, and the insertion of her name was therefore material; and as it was so written without the consent of anybody, and has since been ratified, adopted, and defended by her, it is a material alteration which vitiates the instrument, and it cannot be received in evidence.

Knoxville National Bank *v.* Clark, 51 Iowa, 264.
Wade *v.* Withington, 1 Allen, 561.
Greenfield & Co. *v.* Stowell, 123 Mass., 196.
Bradley *v.* Holmes, 37 Mich., 1.
Holmes *v.* Trumper, 22 Mich., 427.
Steel *v.* Wood, 6 Wall., 80.

XIV.

Defendant amended his petition after the evidence was in and argument entered upon in order to conform his pleadings to the evidence, which delay in the making of said amendment was largely, if not entirely, owing to the methods adopted by plaintiff's attorneys in preventing the defendant from coming to a full knowledge of the facts in the keeping of Traer and wife.

To allow an amendment is the rule, and to refuse the exception has been so often held by the Iowa courts that we forbear entering upon a discussion. (See Miller *v.* Perry & Townsend, 38 Iowa, 301; Gray *v.* Regan, 37 Iowa, 688; O'Connell *v.*

Cotter, 44 Iowa, 48; Code, § 2689; Bebb *v.* Preston, 3 Iowa, 325; Scott *v.* County of Chickasaw, 53 Iowa, 47.) An examination of the record will fully disclose the circumstances under which such amendment became necessary, and the reasons there are fully apparent for its not being made sooner and the purpose for which it was made, involving nothing but what had actually been tried, and simply to conform pleadings to evidence. This matter of the amendment being wholly within the discretion, power, and control of the Iowa court, is, so far as the present aspect of the case, absolutely *res adjudicata*, and not a point now to be inquired into.

THE UNITED STATES STATUTE OF LIMITATIONS, § 5057.

The plaintiffs, (defendants below,) as a technical defence, interposed a Federal statute of limitations, and on that ground have appealed to this tribunal.

1. "It is the settled doctrine of courts of *equity* that the statute of limitation only begins to run, in case of fraud, from the time of the *discovery of the fraud*, and not before."

7 Wait's Action and Defences, 243, and citations.

The defendants, (plaintiff below,) in amendment to petition in which he makes Alla D. Traer a party defendant, (pages 22 to 26,) alleges a conspiracy between John W. and Alla D. Traer, his wife, to cheat and defraud Clews' assignor. In a subsequent amendment to this petition (page 24) the plaintiff below alleges that the defendants below studiously concealed their part in the fraudulent transactions from the plaintiff below and his assignor; that plaintiff and his assignor had no means of discovering the same until their connection therewith was discovered upon the examination of John W. Traer under oath, on September 24th, 1879.

This allegation of plaintiff's below is not contradicted or denied.

There is no issue of fact on this point. All this is confessed.

The decision of the Federal Supreme Court in Baily *v.* Glover (21 Wall., 342) covers the whole question.

The declaration in Baily *v.* Glover reads so much like that in this action as to suggest, what is probably true, that the counsel, in drawing the amendment in this case, had the report in Baily *v.* Glover before him, and so much of the very language of the declaration in that case as applied was incorporated into the petition. Baily *v.* Glover was an equitable action which came before the Federal Supreme Court on *demurrer* to the declaration. So the very phraseology of the declaration was before that Court. The Court says:

"In suits of *equity*, when relief is sought on the ground of fraud, the *authorities are without conflict* in support of the doctrine that, when the ignorance of the fraud has been produced by affirmative acts of the guilty party in concealing the facts from the other, the statute will not bar relief, provided the suit is brought within the proper time after the discovery of the fraud."

The Court several times, in different phraseology, emphasizes the rule as one adhered to by courts of *equity*, and say, further, (p. 348:) "As the case before us is a suit in *equity*, and as the bill contains distinct allegation that the defendants *kept secret* and *concealed* from the parties interested the fraud which is sought to be redressed, we might rest this case on what we have said is the *undisputed doctrine* of courts of *equity*." They then proceed to discuss the phraseology of the act, and show that the rule applies to this particular statute, by convincing arguments, and say, in closing the opinion: "When the fraud has been *concealed*, or is of such a character as to *conceal itself*, the statute does not begin to run till the fraud is discovered by, or become known to, the party suing or those in privity with him."

It will be borne in mind that the court has under consideration the very statute of limitation invoked in this action. The petition in the case at bar is almost a copy in the essential

points of that in Baily *v.* Glover. This decision has never been changed, reversed, overruled, modified, or toned down, but is the interpretation of this law, as put upon it by the highest Federal court.

The case of Wood *v.* Carpenter, (11 Otto, 135,) relied upon and largely quoted from by Traer's counsel in the court below, was an action at *law*, and is the interpretation put by the court in a law action upon the statute of Indiana.

The rule laid down in Baldwin *v.* Tuttle, (22 Iowa, 66 on p. 72,) is, "The *defendants* have pleaded the statute of limitations, and have upon them the *burden of proving facts* necessary to constitute the bar. To do that it is essential to prove, not only that five years have elapsed since the fraud, but also that it was discovered by or known to the plaintiff five years before action brought."

The same point arose in Harlan *v.* Stevenson, (30 Iowa, 371.) This was not an equitable action. The court says, on p. 371:

"The defence of the statute of limitations is an affirmative one, and the party *pleading* it must show the facts constituting a bar by it. To do that it was necessary to show that plaintiff had knowledge of the fraud more than five years before action brought. * * * (Citing Baldwin *v.* Tuttle, *supra.*) The statute would not begin to run till the discovery of the fraud."

In District, etc., Boomer *v.* French, the question arose in a law action brought to recover a sum of money not accounted for by a school treasurer. By the statute of Iowa causes of action against a public officer are barred in three years.

Here more than four years had elapsed. It was sought to remove the bar of the statute by averring that the defendant, by fictitious entries in his book and fraudulent concealments, had kept from the plaintiff the fact of the receipt of the money. This, as will be observed, was on *demurrer* in a law action, where the allegations of concealment were no more minute or comprehensive than in the case at bar; but the court, after citing authorities, English and American,

the list of which covers two-thirds of a printed page, say, even in such a case, that "it must be understood, in order to defeat the bar of the statute, that actual fraudulent concealment must be averred and shown; mere ignorance is not enough. Here such fraudulent acts and concealments are directly averred, and these being admitted by the demurrer, it was error to sustain it."

In the present case the allegations of concealment are admitted by not being denied, and by the stipulation as to the knowledge of plaintiff's counsel, and by the peculiar circumstances of the concealment and how it was managed by Traer and wife as shown upon the trial.

2. Defendants claim that the amendment alleging the concealment of the fraud should be taken as denied.

This position is taken to break the force of the rule of pleading that every allegation not denied is confessed. The ground for claiming that this allegation is denied is the singular one that they denied the allegations of the original petition, "that the amendment with the original constitute but one pleading," therefore the amendment is denied. The denials in the original are not general, but specific and *seriatim*. This amendment is to be taken as a part of the original; that is true, and it is the same as if they denied all the allegations of the original except this one, and concerning this they were silent. In such a case would any sane pleader claim that the whole pleading is to be taken as denied? Perhaps, like their swearing, the defendants wanted it understood that they denied at wholesale, not only all that we had said, but all that we might say! For us to say that of them would be safe enough in morals, but we confess it would not be good pleading.

3. The Federal statute of limitations does not apply to such a case as this. Traer claims no *adverse* interest to the estate that came into the hands of the trustee in bankruptcy.

The statute of limitations applies only to interests adverse to the estate, which came into the trustees hands, not to interests

adverse to the trustee subsequent to his taking charge of the estate. So expressly ruled in three able and exhaustive opinions in Stevens *v.* Houser, (39 N. Y., 302.)

Woodruff, J., in his opinion, says: "The cause of action did not arise until several years after the decree in bankruptcy; and I fully agree with the views ascribed to Mr. Justice Nelson, In the matter of Conaut, that the two years' limitation has no application to a cause of action which *never vested in the bankrupt*, but arises out of a wrong done to the assignee himself, or to the property vested in him." (See the full opinion.)

Bacon, J., (p. 309:) "In my judgment the statute in question has no application to a case of this kind. * * * It is obvious that the limitation only applies to suits growing out of disputes in respect to property * * * which came to the hands of the assignee, and to which adverse claims existed *while in the hands of the bankrupt* and *before assignment*." See also the opinion of Judge Mason, on page 310, who quotes the statute relied on by the defendants in this action, being the same statute contained in the laws of 1841, and says: "This statute has no application to the case at bar for several reasons. In the first place, the design and object of this eighth section, fixing this two-years' limitation, was only intended to apply to suits in respect to property and rights of property of the bankrupt which came to the hands of the assignee, and to which adverse claims existed while in the hands of the bankrupt and before the assignment."

4. The statute of limitations relied on is a Federal statute, and has no application to proceedings in a State court.

It is claimed that Congress undertook to legislate in regard to the State courts in this section. The section will bear no such construction when taken as a whole. It clearly was not the intention of Congress to pass any statute of limitations for the courts of Iowa. If it did, the following would be the effect: The legislature of Iowa would say to the world: "If you have any grievances against the citizens of Iowa, our

court are open to you for redress if you commence your suit within *five* years after the cause of action arose." But Congress, on the other hand, would say: "No, you can't sue in the Iowa courts unless you commence within *two* years." Clearly, it was never the intention of Congress to interfere thus with the State courts. We are more strongly led to this conclusion by the position taken several years ago in regard to the Federal law directing the stamping of every original process issued from a court of record. It was held, without exception, that the law was unconstitutional, because Congress could pass no law and could assert no right over State courts.

See Fifield *v.* Close, 15 Mich., 505.
Warren *v.* Paul, 22 Ind., 276.
Jones *v.* Keep, 19 Wis., 369.
Sayles *v.* Davis, 22 Wis., 226.

So far as the right to bring an action in the State court is concerned, the law of Congress is the same as a foreign State. *Lex fori governs.*

If the right of the assignee to bring this action in a Federal court was barred by the statute of limitations, such is not the case in the State courts.

Lincoln *v.* Battelle, (6 Wend., 475 on 486) was a case where the law of a foreign State required creditors to present their claims against a debtor by a specified day, or both remedy and debt would be extinguished, and it appears that the creditor did not so present his claim, but sued in New York. It was *held* that this was the plea of a statute of limitations of a foreign State, and *no bar* to an action to enforce the right in New York.

Miller *v.* Brenham, (68 N. Y., 83,) was an action brought in New York on a judgment obtained in California, which was extinguished in that State by the lapse of five years. Defendant had continuously resided in California during the five years. *Held, lex fori governs.* It was once a valid claim and the statute of California would be no limit on the right of action in New York.

The court in that action quote the following, from Scudder *v.* Union National Bank, (1 Otto, 406:) "Matters respecting the remedy, such as bringing suits, admissibility of evidence, *statutes of limitation*, depend upon the law of the place where the suit is brought."

Hence the conclusion is inevitable that, as there is no law of Iowa limiting plaintiff's right to bring this action in an Iowa court, no law elsewhere can effect that right.

5. It may be urged that a trustee in bankruptcy is a creature of a Federal statute, and that that statute imposes upon him certain disabilities.

The answer to that is, that when the deed of assignment passes to the trustee he is vested with the title to the estate. After that his rights in that property are no less than at common law, having all the rights of the bankrupt. (See § 5047 of Bankrupt Act.) Defendants swindled him out of that property by a palpable fraud cognizable at common law. Then he has a right to seek redress in any court which has the power to redress grievances of that character. This is not a grievance which would not be such but for the bankrupt act. It is one which courts have ever redressed, and will ever continue to do so while there are wrongs to be righted.

Suppose the trustee was a general assignee under the laws of Illinois, and suppose the Illinois statute provided that such general assignee must bring all action within two years, it is plain that under the decision in 6 Wendall, 475, and a host of others, that he could sue in an Iowa court even after the lapse of the two years, unless a similar statute there should prevent. Such is the law as stated in Scudder *v.* Union National Bank, (*supra.*)

6. The Federal statute of limitations does not apply to this case, for the reason that it is a limitation on the *bankruptcy trustee, as such, and not a limitation on the cause of action.*

This is a most important position, and is an effective and complete answer to the plea of the statute of limitations.

The Federal statute reads as follows: "No suit at law or

in equity shall in any case be maintainable by or against *such assignee*," &c.

The ordinary statute of limitations relates to the cause of action, as in Iowa, viz: "The following *actions* may be brought within times herein limited," &c. (Iowa Code, § 2529.)

"Actions for relief on the ground of fraud * * * the *cause of action* shall not be deemed to have accrued until the fraud * * * shall have been discovered," &c. (Iowa Code, § 2530.) The same or similar expressions are used in the statutes of all the States, so that the *cause of action*, in whosoever hands it may be at the time the action is begun, is or is not barred, according to the facts.

But in this Federal statute the limitation is upon the assignee, and the court, in Baily *v.* Glover, (21 Wall., 346,) tells us why; because: "It is obviously one of the purposes of the bankrupt law that there should be a *speedy disposition of the bankrupt assets*. This is only second in importance to securing equality of distribution. The act is filled with provisions for quick and summary disposal of questions arising in the progress of the case," &c.

If, then, speedy disposition of the bankrupt's assets is the object of this law, then the design of the law is accomplished when the assignee sells the assets and converts them into money instead of conducting a long, lingering suit.

Observe the authority of the assignee:

"§ 5062, B. (Laws of June 22d, 1874.) That unless otherwise ordered by the court the assignee shall sell the property of the bankrupt, whether real or personal, at public auction, &c. * * * And the court may, in its discretion, order any real estate * * * to be sold for one-fourth cash at time of sale and the residue in eighteen months, in instalments," &c.

Suppose that part of the assets of a bankrupt were promissory notes. Could he sell them under the provisions above quoted? Most certainly. Suppose near the end of his administration of two years' duration he sold these notes, in order to

a "speedy distribution of the bankrupt's assets," nearly two years after the cause of action had accrued; does any man of sound judgment claim that the purchaser of such notes would have no longer time to make the collection than the personal limitation on the assignee? By sec. 5062, B., the assignee could, under the order of court, take notes due in eighteen months. The notes are good, perhaps secured on the real estate sold. The creditors are clamorous to have the estate wound up. They are not willing to wait for the notes to mature; so the assignee sells them. Has the purchaser no longer time to collect than the assignee had, or does the ordinary statute of limitations apply? A lot of the assets, including notes and accounts, are almost worthless. But parties are willing to take their risk on them. Assignee sells and gets something for the estate. Are the purchasers tied up to the assignee's two years?

It is not true that the rights of the assignor *always* follow the thing assigned. The assignee in bankruptcy can bring an action on any claim in the circuit court of the United States. He sells a $450 promissory note, as he has a right. Can the purchaser sue it in the Federal court? No. The *cause of action* has gone out from under the operation of the Federal statute, and the rights to enforce it are the same as if it had never been in the hands of the assignee.

We might add that not only was it the policy of the bankrupt act that the estate should be *quickly* closed, but that it should realize the greatest amount possible. It requires no argument to show that if the two years' limitation attached to any *chose in action* that passed through the assignee's hands, that such assets would sell for a very small sum, compared with what the same would realize if the ordinary statute applies. Here is a note overdue twenty months agains a man poor, but honest and energetic. It is not enforcible now, but a purchaser knowing the character and ability of the maker might be willing to pay a good sum for it if he could take the

ordinary statute of limitations to collect it, but would not pay a cent if he must enforce it within four months.

Again, personal disability to bring an action in a Federal court exists on an ordinary cause of action between citizens of the same State. If in the ordinary course of business that cause of action passes into the hand of the citizen of another State *he* can sue on it in the Federal court. He did not get the right from his assignor, but it is a personal right which he has independent of the cause of action.

If we are correct in our reasoning, then the two years' statute of limitations is a personal one on the assignee, designed to facilitate the speedy closing of bankrupts' estates, and it does not attach to the cause of action itself, otherwise every *chose in action* that passes through the hands of an assignee in bankruptcy would be tainted with the two years' limitation. Such cannot be the law.

7. It seems, in fact, that whenever section 5057 of the Revised Statutes has been questioned, Bailey *v.* Glover (21 Wallace, 342) has been cited always by the Court, and with prompt and absolute approval. Though there are in fact some thirty such cases, it is not at all necessary that they should now be cited in detail, since we believe this Honorable Court will fully agree to the assertion we have made ~~above~~.

It is also clear from all the decisions we have cited that this section of the statute has always been construed strictly, so as to cover only what it necessarily must, and this is emphasized by the more recent cases; for instance, it has been decided that this section has no application in a suit between a bankrupt and assignee.

Phelps *v.* McDonald, 99 U. S. Report, 298.

It has no application in a suit brought by mortgagee to foreclose a mortgage, making the bankrupt and assignee parties. The court have held that there is no adverse interest, hence statute does not apply.

Gildersleeve *v.* Goynor, 15 Fed. Rep., 101.

Also, that when a second assignee had been appointed after the two years limitation had expired, an allegation of fraud and non-discovery by first assignee was sufficient to remove the bar of the statue, (citing, as all the authorities do, 21 Wallace, 342.)

Duff *v.* Bank of Wellsville, 13 Fed. Rep., 65.

In this case the fraud is charged no stronger than we charge it. Observe the language of the Court; also observe the note at the bottom of page 67; see also, West Portland *v.* Lownsdale, 17 Fed. Rep., p. 205, (citing and approving 21 Wallace, 342.)

Further, see 98 U. S., 252, and the exceptionally strong language on the question of speedy administration of the estate. In that case the bar of the statute had run before the sale by assignee, and purchaser was of course nonsuited.

Further, Eyster *v.* Goff (91 U. S., 521) holds that the same construction remains open to one contesting his rights with an assignee in bankruptcy that the jurisdiction of the Federal courts is not exclusive.

Also cited and approved by 93 U. S., 130; Claflin *v.* Houseman, page 134; same also in 92 U. S., 179.

IN CONCLUSION,

We respectfully call attention to the very clear and very able opinion in this case when before the supreme court of Iowa, and from which this appeal is taken. This opinion was given by Judge Beck, and will be found on page 294. In it are candidly and carefully considered and reviewed all the points now made in the argument, and on each and all the full bench of the Iowa supreme court, through Judge Beck, decided against this John W. Traer and Alla D. Traer, his wife.

FINALLY.

We desire to call the attention of this Honorable Court to

the apparent fact, in view of the proof contained in the record and the plain meaning of the law bearing thereon, that this appeal was merely sued out for delay—particularly will this be evident when it is considered that the use of money in the past few years has been worth more in Iowa than the rate of interest allowed by this Court.

We therefore ask under paragraph 2 of Rule 23 of this Court, that if judgment shall be given in our favor in this case, we shall be duly allowed damages in addition to interest.

Respectfully,

FRANK G. CLARK,
LLEWELLYN DEANE.

Frank G. Clark

L. Deane

115-528

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Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN W. TRAER ET AL.,
Appellants,
vs.
HENRY CLEWS.

IN EQUITY. No. 46.

SUPPLEMENTAL BRIEF FOR APPELLEE.

FRANK G. CLARK,
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Attorneys.

BERESFORD, PR.

Supreme Court of the United States.

OCTOBER TERM, 1885.

JOHN W. TRAER et al., appellants,
vs.
HENRY CLEWS.
} In Equity. No. 46.

Appeal from the Supreme Court of Iowa.

SUPPLEMENTAL BRIEF.

This suit was instituted in the District Court of Linn County, Iowa, by Henry Clews, the defendant in error, to recover certain dividends and assets fraudulently converted by the plaintiffs in error while constituting a part of his estate in bankruptcy, and while J. Nelson Tappan was trustee. These dividends and assets were represented by a certificate of stock in a dissolved corporation, of which one of the plaintiffs in error had been made trustee, and in which the defendant in error, before his bankruptcy, was a stockholder; and said defendant in error denies his right and title thereto by purchase and assignment of said J. Nelson Tappan, the trustee in bankruptcy of said estate.

In answer to the Brief for the Plaintiffs in Error we desire to call attention to the following points:

AS TO ASSIGNMENT OF ERRORS.

The second point was not raised in the Court below. There was no question made of the sufficiency of the transfer by assignment to Clews of the whole interest Tappan had. Nor was this assignment, in form or substance, in any manner questioned, nor the right of Clews to maintain his suit thereon.

The fifth point is also entirely new, and is here raised for the first time. It is substantially the second point restated.

AS TO THE JURISDICTION OF THIS COURT.

We reply to the first point made by plaintiffs in error, (see their brief, page 5,) that this Court has no jurisdiction in this case under Section 5057, Revised Statutes, because,

1st. This is not a suit by or against a trustee or assignee in bankruptcy.

2d. This section only applies to suits where an assignee in bankruptcy is a party, and then only when the interests are adverse.

As to Plaintiffs' Second Point on Jurisdiction.

1st. This Court has no jurisdiction as to the title under Tappan to modify or change the action of a trustee when within the unquestioned and lawful scope of his authority.

2d. This is not a controversy as to property in the hands of an assignee or trustee, but is a suit to determine the

ownership of property, the disposition of which said trustee had full authority to make, and which authority has not been called in question.

3d. The bankrupt law does not apply to cases where one has become purchaser at the sale of bankrupt effects of claims due by third persons.
6 La. An., 587.

4th. The plaintiffs in error have at no time specially pleaded and claimed that the stock and dividends were assigned by Tappan as trustee in bankruptcy, holding his commission and exercising his authority under the United States.

5th. The decision below was not against title in the plaintiffs in error as purchasers of Tappan, assignee (trustee) in bankruptcy, holding his commission and authority under the United States, but was based on the fraud perpetrated by the plaintiffs in error.

6th. The question of Tappan's authority as trustee in bankruptcy was not in controversy below, nor is there any reference to it in the opinion of the Court.

The cases cited by plaintiffs in error as conferring jurisdiction on this Court in the present instance relate to orders and proceedings of courts in bankruptcy, or like tribunals, which are regulated by specific statutes.

No case has been found where this Court has interposed to modify or change the action of a trustee when within the ordinary scope of his authority.

The statute of limitations, section 5057 Revised Statutes, was the only Federal question attempted to be raised by the plaintiffs in error in the Court below.

Consequently there is no other Federal question any way suggested in the record.

Chouteau *vs.* Gibson, 111 U. S., 200.
Susquehanna *vs.* West, 110 U. S., 57.
Boughton *vs.* Exchange Bank, 104 U. S., 427.
Brown *vs.* Colorado, 106 U. S., 95.
Crossley *vs.* New Orleans, 108 U. S., 105.

The question of Tappan holding his commission as trustee in bankruptcy under the United States was not presented to the Court below, and the decision below had nothing to do with any such matter, but rested wholly on the ground of fraud.

111 U. S. Rep., 361; Santa Cruz *vs.* Santa Cruz.

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91. U.S. 379. Romie vs. Casanova
" 594. Rolling vs Lersner